

JOINT APPENDIX

Supreme Court, U. S.
FILED

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MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 76-1484

JAMES ZURCHER, et al.,
Petitioners,

VS.

THE STANFORD DAILY, et al.

No. 76-1600

LOUIS P. BERONA, District Attorney, et al.,
Petitioners,

VS.

THE STANFORD DAILY, et al.

**On Writs of Certiorari to the United States Court of Appeals
for the Ninth Circuit**

Petitions for Writ of Certiorari Filed
April 26 and May 16, 1977
Certiorari Granted October 3, 1977

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¹The following may be found in the Appendices of both petitions for certiorari: The opinion of the Court of Appeals filed February 2, 1977 (Appendix A); the Court of Appeals' order denying the petition for rehearing and rejecting the suggestions for rehearing en banc filed March 28, 1977 (Appendix B); the opinion of the United States District Court for the Northern District of California filed October 5, 1972 (Appendix C); memorandum and order of the United States District Court for the Northern District of California granting attorneys' fees filed August 10, 1973 (Appendix D); memorandum and order of the United States District Court for the Northern District of California fixing attorneys' fees at \$47,500. (Appendix E); judgment of the United States District Court for the Northern District of California filed July 23, 1974 (Appendix F); and notice of entry of judgment by the United States District Court for the Northern District of California filed July 25, 1974 (Appendix G).

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**CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES**

- May 13, 1971 (USDC)—Plaintiffs' complaint for declaratory and injunctive relief filed in the United States District Court for the Northern District of California.
- May 13, 1971 (USDC)—Order for service of process by Emory Wes Sage filed.
- May 13, 1971 (USDC)—Plaintiffs' notice and motion for intradistrict transfer of venue to San Jose filed.
- June 2, 1971 (USDC)—Stipulation extending time to June 11, 1971 for defendants to answer complaint filed.
- June 2, 1971 (USDC)—Return on summons for all defendants filed.
- June 2, 1971 (USDC)—Answer to complaint of defendants Phelps, Bergna and Brown filed.
- June 4, 1971 (USDC)—Defendants' notice of requirement of three-judge court filed.
- June 7, 1971 (USDC)—Plaintiffs' motion for transfer of venue granted and case transferred to San Jose calendar.
- June 8, 1971 (USDC)—Answer to complaint of police defendants filed.
- June 10, 1971 (USDC)—Police defendants notice of requirement of three-judge court filed.
- June 11, 1971 (USDC)—Case continued to September 10, 1971 for hearing on motions.

- June 25, 1971 (USDC)—Stipulation on time to file pleadings on three-judge court and dismissal approved and filed.
- August 12, 1971 (USDC)—Defendants' memorandum on three-judge court filed.
- August 13, 1971 (USDC)—Defendants' notice and motion to dismiss or stay action filed.
- August 23, 1971 (USDC)—Plaintiffs' memorandum of points and authorities in opposition to defendants' motion to dismiss or stay and in opposition to three-judge court filed.
- August 30, 1971 (USDC)—Defendants' Bergna, Brown and Phelps reply to plaintiffs' memorandum of points and authorities in opposition to motion to dismiss or stay filed.
- September 8, 1971 (USDC)—Defendants' reply to plaintiffs' memorandum of points and authorities in opposition to three-judge court filed.
- September 10, 1971 (USDC)—Defendants' motion to convene three-judge court and to dismiss or stay submitted.
- September 23, 1971 (USDC)—Request for three-judge court denied and motion to dismiss or abstain denied.
- October 8, 1971 (USDC)—Defendants' notice of time and place of taking depositions of plaintiffs filed.
- June 12, 1972 (USDC)—Defendants' notice of time and place of taking depositions of plaintiffs filed.

June 14, 1972 (USDC)—Plaintiffs' notice of motion and motion for protective order filed.

June 14, 1972 (USDC)—Affidavit of Jerome B. Falk, Jr. filed.

June 14, 1972 (USDC)—Affidavit of service by mail of document filed.

June 19, 1972 (USDC)—Plaintiffs' notice of motion and motion for summary judgment filed.

June 19, 1972 (USDC)—Plaintiffs' points and authorities in support of motion for summary judgment filed.

June 19, 1972 (USDC)—Affidavits in support of plaintiffs' motion for summary judgment filed.

June 21, 1972 (USDC)—Plaintiffs' corrected notice of motion for protective order filed.

June 26, 1972 (USDC)—Defendants' request for admissions filed.

July 7, 1972 (USDC)—Defendants' memorandum of points and authorities and affidavits in opposition to motion for summary judgment filed.

July 7, 1972 (USDC)—Index to affidavits in opposition to motion for summary judgment filed.

July 7, 1972 (USDC)—Defendants' memorandum of points and authorities and affidavits in opposition to motion for protective order filed.

July 10, 1972 (USDC)—Plaintiffs' reply memorandum filed.

July 10, 1972 (USDC)—Defendants' memorandum in opposition to plaintiffs' motion for summary judgment and partial list of fact issues filed.

July 10, 1972 (USDC)—Plaintiffs' motion for protective order and for summary judgment order submitted and motion for summary judgment severed as to defendant Judge Phelps.

October 5, 1972 (USDC)—Memorandum and order ruling in favor of plaintiffs but denying permanent injunction filed.

November 6, 1972 (USDC)—Notice of appeal filed by defendants.

November 7, 1972 (USDC)—Notice of filing of appeal mailed to parties of record and Ninth Circuit Court of Appeals.

November 9, 1972 (USDC)—Substitution of attorneys for defendant Phelps filed.

November 15, 1972 (USDC)—Designation of record on appeal filed.

November 16, 1972 (USDC)—Judgment filed on November 14, 1972, entered and notice of entry of judgment mailed to parties of record.

November 16, 1972 (USDC)—Clerk's memorandum to counsel on designation of record filed.

November 17, 1972 (USDC)—Defendants Bergna's and Brown's notice of disapproval of form of judgment filed.

December 15, 1972 (USDC)—Record on appeal mailed to Ninth Circuit Court of Appeals.

December 15, 1972 (USDC)—Dismissal with prejudice as to defendant J. Barton Phelps filed.

December 15, 1972 (USDC)—Order setting aside and vacating judgment failed.

December 21, 1972 (USDC)—Receipt from Ninth Circuit Court of Appeals of record on appeal filed.

January 3, 1973 (USDC)—First supplemental record on appeal mailed to Ninth Circuit Court of Appeals.

February 7, 1973 (USDC)—Plaintiffs' notice of motion and motion for attorneys' fees filed.

March 27, 1973 (USDC)—Memorandum of points and authorities in opposition to plaintiffs' motion for attorneys' fees and proof of service of memorandum filed.

March 30, 1973 (USDC)—Plaintiffs' reply memorandum in support of motion for attorneys' fees filed.

March 30, 1973 (USDC)—Supplemental affidavit of Jerome B. Falk, Jr. filed.

April 2, 1973 (USDC)—Motion for attorneys' fees submitted.

April 16, 1973 (USDC)—Defendants' notice of motion and motion to dismiss complaint or for summary judgment filed.

June 5, 1973 (USDC)—Plaintiffs' memorandum of points and authorities in opposition to defendants' motion to dismiss or for summary judgment filed.

June 11, 1973 (USDC)—Stipulation and order on plaintiffs' response to defendants' motion to dismiss or for summary judgment, defendants' reply, and submission of the motion filed.

June 19, 1973 (USDC)—Plaintiffs' notice of motion and motion for preliminary injunction and order shorting time for service of motion on defendants filed.

June 20, 1973 (USDC)—Affidavit of service by mail of notice and motion for preliminary injunction filed.

June 20, 1973 (USDC)—Reply memorandum in support of defendants' motion to dismiss complaint or for summary judgment filed.

June 25, 1973 (USDC)—Memorandum of points and authorities in opposition to plaintiffs' motion for a preliminary injunction filed.

June 27, 1973 (USDC)—Argument in opposition to request for preliminary injunction filed.

June 27, 1973 (USDC)—Motion for preliminary injunction submitted.

August 10, 1973 (USDC)—Memorandum and order that plaintiffs' motion for award of reasonable attorneys' fees as cost be granted filed.

September 28, 1973 (USDC)—Unreported minute order that plaintiffs' motion for preliminary injunction is denied and further order that motion of defendant Palo Alto police parties is denied filed.

January 9, 1974 (USDC)—Plaintiffs' notice of motion and motion for award of attorneys' fees filed.

January 10, 1974 (USDC)—Clerk's notice of resetting plaintiffs' motion for award of attorneys' fees filed.

February 19, 1974 (USDC)—Depositions of Robert H. Mnookin, Jerome B. Falk, and Franklin R. Garfield filed.

March 4, 1974 (USDC)—Stipulation and order continuing motion for attorneys' fees filed.

March 13, 1974 (USDC)—Agreement and order to continue plaintiffs' motion for attorneys' fees filed.

March 18, 1974 (USDC)—Memorandum of defendants' on the amount of attorneys' fees to be awarded filed.

March 21, 1974 (USDC)—Opposition of defendants Bergna and Brown to the amount plaintiffs request for attorneys' fees filed.

March 21, 1974 (USDC)—Affidavit of Peter G. Stone filed.

April 1, 1974 (USDC)—Reply memorandum in support of plaintiffs' motion for award of attorneys' fees filed.

April 1, 1974 (USDC)—Affidavit of Jerome B. Falk, Jr. filed.

April 8, 1974 (USDC)—Plaintiffs' motion for attorneys' fees submitted.

April 8, 1974 (USDC)—Corrections to depositions of Garfield and Falk filed.

April 16, 1974 (USDC)—Corrections to deposition of Robert Mnookin filed.

July 17, 1974 (USDC)—Memorandum and order that plaintiffs be awarded attorneys' fees in the sum of \$47,500 filed.

July 25, 1974 (USDC)—Judgment that plaintiffs are entitled to declaratory relief in conformity with memorandum and order previously filed, that plaintiffs recover attorneys' fees with interest, that plaintiffs recover their other costs of suit, and that the judgment is without prejudice to plaintiffs seeking further relief entered and notice of entry of judgment filed.

August 6, 1974 (USDC)—Plaintiffs' motion to tax costs filed.

August 12, 1974 (USDC)—Clerk's notice that \$147 in costs is taxed filed.

August 16, 1974 (USDC)—First supplemental certificate of clerk to record on appeal filed.

August 21, 1974 (USDC)—Joint notice of appeal to the Court of Appeals filed by defendants.

August 22, 1974 (USDC)—Notice to counsel of record on appeal mailed.

September 4, 1974 (USDC)—Plaintiffs and defendants' designation of the record on appeal filed.

September 13, 1974 (USDC)—Application for order for extension of time for filing record and docketing appeal and affidavit in support thereof filed.

September 13, 1974 (USDC)—Order extending time to file record and docket appeal filed.

September 13, 1974 (USDC)—Defendants' supersedeas bond on appeal approved and filed.

November 20, 1974 (USCA)—Case docketed and appearances of counsel entered.

November 20, 1974 (USCA)—Appellants' motion for extension of time to file record filed.

November 27, 1974 (USCA)—Order granting appellants' motion for extension of time to file record entered.

November 30, 1974 (USCA)—Appellants' motion for extension of time to file record filed.

December 9, 1974 (USDC)—Defendants Bergna's and Brown's supersedeas bond on appeal approved and filed.

December 9, 1974 (USDC)—Supersedeas bond on appeal approved and filed.

January 6, 1975 (USCA)—Order granting extension of time to file record on appeal entered.

January 7, 1975 (USDC)—Reporter's Transcript of June 11, 1971, September 10, 1971, July 10, 1972, April 2, 1972, and June 27, 1973 filed.

January 20, 1975 (USDC)—Record sent to Circuit Court of Appeals and notices mailed to counsel of record.

January 21, 1975 (USCA)—Certified transcript of record on appeal filed.

March 24, 1975 (USDC)—Receipt of record from Ninth Circuit Court of Appeals filed.

April 3, 1975 (USDC)—Two additional copies of the record filed.

April 15, 1974 (USDC)—Appellants' ex parte motion for order to augment the record and for extension of time to file appellants' brief filed.

April 16, 1975 (USDC)—Letter from Ninth Circuit Court of Appeals to counsel on renumbering pages of the record on appeal filed.

April 22, 1975 (USCA)—Order granting appellants' motion to augment the record and granting further time for filing appellants' brief filed.

April 24, 1975 (USDC)—Copy of order from Ninth Circuit Court of Appeals granting defendants' motion to augment record on appeal filed.

April 24, 1975 (USDC)—First supplemental record on appeal to the Ninth Circuit Court of Appeals.

May 16, 1975 (USDC)—Appellants' ex parte motion for extension of time for filing brief filed.

May 21, 1975 (USCA)—Order extending time for filing appellants' brief filed.

May 21, 1975 (USCA)—Two additional copies of the record filed.

May 22, 1975 (USCA)—Certified supplemental transcript of record on appeal filed.

June 5, 1975 (USCA)—Received 25 copies of amicus brief with motion for leave to file.

June 13, 1975 (USCA)—Appellants' brief filed.

June 17, 1975 (USCA)—The motion to file amicus curiae brief denied.

July 14, 1975 (USCA)—Appellees' motion for extension of time to file brief filed.

July 21, 1975 (USCA)—25 copies of amicus curiae brief for State of California received with motion to permit late filing of brief.

July 24, 1975 (USCA)—Clerk ordered to file the brief of the State of California.

July 24, 1975 (USCA)—Order granting appellees an extension of time to file brief filed.

August 8, 1975 (USCA)—Appellees' brief filed.

August 22, 1975 (USCA)—Appellees' reply brief filed.

October 6, 1976 (USCA)—Received letter from Attorney General about additional citations.

October 6, 1976 (USCA)—Received letter from appellees about additional citations.

October 13, 1976 (USCA)—Case argued and submitted.

November 3, 1976 (USCA)—Received appellees' supplemental brief with motion for leave to file it.

November 22, 1976 (USCA)—Appellees' motion for leave to file a supplemental brief is granted and appellants are given ten days in which to reply.

Submission is vacated until ten days following entry of the order.

December 2, 1976 (USCA)—Appellants' response to supplemental brief of appellees filed.

January 19, 1977 (USCA)—Received letter from Jerome B. Falk about additional citations.

February 3, 1977 (USCA)—Received letter from appellant requesting that no consideration be given to the Wade decision.

February 2, 1977 (USCA)—Opinion affirming the decision below filed and judgment entered.

February 14, 1977 (USCA)—Appellants' notice of joining of co-counsel filed.

February 16, 1977 (USCA)—Petition for rehearing and suggestion for rehearing en banc filed.

March 9, 1977 (USCA)—Received from appellant letter clarifying citation of a case in the petition for rehearing.

March 28, 1977 (USCA)—Order denying petition for rehearing and the suggestion for rehearing en banc filed.

April 1, 1977 (USCA)—Appellant's motion for stay of mandate filed.

April 5, 1977 (USCA)—Appellees' memorandum in opposition to motion for stay of mandate filed.

April 8, 1977 (USCA)—Appellants' reply to memorandum in opposition to motion for stay of mandate filed.

April 12, 1977 (USCA)—Order staying issuance of mandate to April 27 filed.

April 18, 1977 (USCA)—Appellants' motion for extension of stay of mandate filed.

April 19, 1977 (USCA)—Appellees' memorandum in opposition to motion for extension of stay of mandate filed.

April 26, 1977 (USCA)—Received telephone call that case being docketed in the Supreme Court with No. 76-1484.

April 29, 1977 (USCA)—Received Supreme Court notice of filing of petition for certiorari on April 26, 1977, assigned No. 76-1484.

May 23, 1977 (USCA)—Received Supreme Court notice of filing of petition for certiorari on May 16, 1977, assigned No. 76-1600.

In the United States District Court
for the Northern District of California

Civil Action No. C-71 912 AJZ

The Stanford Daily, Felicity A. Barringer, Fred Mann, Edward H. Kohn, Richard Lee Greathouse, Robert Litterman, Hall Daily and Steven G. Ungar,

Plaintiffs,

vs.

James Zurcher, individually and as Chief of Police of the City of Palo Alto, County of Santa Clara, State of California, James Bonander, Paul Deisinger, Donald Martin, and Richard Peardon, all individually and as Police Officers of the City of Palo Alto, County of Santa Clara, State of California, Louis P. Bergna, individually and as District Attorney for the County of Santa Clara, State of California, Craig Brown, individually and as Deputy District Attorney for the County of Santa Clara, State of California, J. Barton Phelps, individually and as Judge of the Municipal Court of the Palo Alto-Mountain View Judicial District, Santa Clara County, State of California,

Defendants.

[Filed May 13, 1971]

CIVIL RIGHTS ACTION COMPLAINT

Jurisdiction

I.

This is an action pursuant to 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights secured to Plaintiffs by the First, Fourth and Fourteenth Amendments to the Constitution of the United States. Jurisdiction is conferred on this Court by 28 U.S.C. §1343.

Parties

II.

Plaintiff, *The Stanford Daily*, is an independent newspaper published by students at Stanford University, Santa Clara County, Stanford, California.

III.

Plaintiffs Felicity A. Barringer, Fred Mann, Edward H. Kohn, Richard Lee Greathouse, Robert Litterman, Hall Daily and Steven G. Ungar are officers or staff members of *The Stanford Daily*.

IV.

Defendant James Zurcher is Chief of Police of the City of Palo Alto, County of Santa Clara, State of California. Defendants James Bonander, Paul Deisinger, Donald Martin, and Richard Peardon are Palo Alto police officers under the command of Chief Zurcher.

V.

Defendant Louis P. Bergna is the District Attorney for the County of Santa Clara, State of California.

Defendant Craig Brown is a Deputy District Attorney for the County of Santa Clara, State of California.

VI.

Defendant J. Barton Phelps is Judge of the Municipal Court of the Palo Alto-Mountain View Judicial District, Santa Clara County, State of California.

Facts

VII.

The Stanford Daily is the only daily newspaper at the University. Its daily press run averages approximately 13,000 copies and its total readership is estimated at 20,000 persons. *The Stanford Daily* is an important source of news for its readers. Although its coverage includes national events, *The Stanford Daily's* primary focus is with news concerning Stanford University and the surrounding community. *The Daily* has provided continuing in-depth coverage of campus political activities of all descriptions, including meetings, speeches, rallies, demonstrations, confrontations and sit-ins.

VIII.

During the 1969-1970 academic year, *The Stanford Daily* found it increasingly difficult to cover some newsworthy events because participants were fearful that things said to, or observed or photographed by newsmen might ultimately end up in police files or somehow be used to prosecute them. Political demonstrators were often particularly apprehensive about

the presence of newspaper photographers at a demonstration, rally, or meeting held on campus. Photographers were in some instances, barred from wholly peaceful meetings. For example, on January 27, 1970 a campus group known as "The New Moratorium" excluded a photographer of *The Stanford Daily* from a room on the campus in which the group was meeting because of the fear that the pictures taken might be used to prosecute those in attendance. For the same reason, *Daily* photographers who were covering demonstrations were sometimes physically threatened or harassed by those participating in demonstrations on the Stanford campus. For example, during the protest against renewed American bombing in North Vietnam that took place in November of 1970, one photographer of *The Stanford Daily* was stopped by a crowd of people and forced to surrender his film.

IX.

Because of incidents like those described above, those responsible for the editorial policy of *The Stanford Daily* have for more than a year engaged in extensive consideration of the legal and professional obligations of the paper with respect to the possible use of materials and photographs in its files for purposes of law enforcement. During this time, members of *The Stanford Daily's* staff have consulted with experts in the field of journalism on the faculty of Stanford University and others actively engaged in the profession so that the complex factors bearing upon the appropriate policy might be fully consid-

ered. That analysis was and has been rendered more difficult because of the uncertainty of applicable legal principles.

X.

At all times, those engaged in the formulation of *The Stanford Daily's* policy were concerned with (1) the barriers to effective news gathering and reporting that a policy permitting disclosure of unpublished photographs or confidential materials would generate; and (2) the physical safety of *The Stanford Daily's* staff. On that basis, it adopted a policy that (1) *The Stanford Daily* would print any photograph which it considered newsworthy whether or not incriminating; and (2) no unpublished photographs or negatives would voluntarily be made available by *The Stanford Daily* to the police or other law enforcement officers. Further, it was decided that, until there had been a clear judicial determination that the police had no right to search for or compel production of materials and unpublished photographs of *The Stanford Daily*, the *Daily* and its staff would consider itself free in the absence of the service of a subpoena or other proper judicial process, to destroy any materials in its possession.

XI.

Based on the above photo policy, first announced in February of 1970, and the special rapport and trust that student demonstrators often felt towards *The Stanford Daily* staff, *The Stanford Daily's* reporters and photographers have been able to attend various meetings, closed to other news media, and to cover

various rallies and demonstrations in a way that would otherwise not have been possible.

XII.

At no time has *The Stanford Daily* destroyed any files, photographs, negatives or other materials in its possession following the service of a judicially authorized subpoena covering any such materials.

XIII.

On Thursday, April 8, 1971, a sit-in demonstration was commenced at the Stanford Hospital by a group of Stanford University students, employees of Stanford University, and other persons protesting the firing of a black hospital employee and the denial of tenure to a Chicano doctor by the Stanford Medical School faculty. This demonstration continued until the evening of Friday, April 9, 1971. At that time, a violent confrontation occurred between the Palo Alto police and certain demonstrators.

XIV.

A number of photographers were present at the hospital demonstration. *The Stanford Daily* had one photographer, Bill Cooke, covering the hospital demonstration. Newsworthy photographs taken by *The Stanford Daily's* photographer appeared in a special Sunday (April 11, 1971) edition of *The Stanford Daily*.

XV.

On April 12, 1971, the Defendant J. Barton Phelps issued a search warrant ordering the "immediate

search" of the offices of *Stanford Daily*. A copy of this warrant is Exhibit A to this Complaint. The warrant states:

In the Municipal Court of the
Palo Alto-Mountain View Judicial District,
County of Santa Clara,
State of California

SEARCH WARRANT

The People of the State of California

To any Peace Officer present
in the County of Santa Clara:

Proof, by affidavit, having been made before me this day by Richard Peardon that there is just, probable and reasonable cause for believing that:

Negatives and photographs and films, evidence material and relevant to the identity of the perpetrators of felonies, to wit, Battery on a Peace Officer and Assault with Deadly Weapon, will be located where described below.

You are therefore commanded, in the daytime, to make immediate search of the premises of *Stanford Daily*, consisting of offices and rooms within the Stokes Publications building, located at Stanford University, County of Santa Clara, State of California, for the personal property described as follows:

- 1) Negatives of films taken at Stanford University Hospital on the evening of April 9, 1971, showing the Sit-In at the Hospital and following events.
- 2) The film used while taking pictures at Stanford University Hospital on April

9, 1971, showing the Sit-In and following events.

- 3) Any pictures which display the events and occurrences at Stanford University Hospital on the evening of April 9, 1971.

and if you find the same or any part thereof, to hold such property in your possession under Calif. Penal Code Section 1536.

Given under my hand this 12th day of April A.D. 1971.

/s/ J. Barton Phelps
Judge of Municipal Court

RPH/eak

XVI.

The basis for the warrant described above was a single affidavit of Defendant Peardon, a copy of which is Exhibit B to this complaint. This affidavit states:

In the Municipal Court of the
Palo Alto-Mountain View Judicial District,
County of Santa Clara,
State of California

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

State of California
County of Santa Clara

Personally appeared before me on this 12th day of April, 1971, Richard Peardon who, on oath, makes complaint, and deposes and says that he has and there is just probable and reasonable cause to believe and he does believe that there is now in the possession of the *Stanford Daily*, and in the possession of its editor and staff members at the offices located within the Storke Publica-

tions building, Stanford University, County of Santa Clara, State of California, certain evidence of felonies, to wit, 243 and 245 of the Calif. Penal Code, described as follows:

- 1) Negatives of film taken at Stanford University Hospital the evening of April 9, 1971.
- 2) The film used while taking pictures at the Stanford University Hospital April 9, 1971.
- 3) Any pictures which display the events and occurrences at the Stanford University Hospital April 9, 1971.

Affiant Richard Peardon is an officer with the Palo Alto Police Department. He has had 21½ years experience in police work. Affiant is investigating the assaults with a deadly weapon and batteries on police officers which occurred April 9, 1971, at the Stanford University Hospital, Stanford, California, that evening.

Affiant personally observed officers of the Palo Alto Police Department who had been called to special duty at Stanford University Hospital struck by objects such as legs of chairs and sticks while attempting to control the crowds at the location. Affiant observed and does know their officers were on duty and in uniform at this time attempting to disperse an unlawful assembly and control the crowd. In addition, affiant was himself struck while defending himself after an order to disperse was given by Chief Anderson of the Palo Alto Police Department.

Affiant also personally observed objects including mental tape dispensers being thrown from inside the hospital doors in the direction of police

officers outside the hospital. During this period of time affiant personally observed pictures being taken of this activity from directly behind the Palo Alto officers. Affiant personally saw cameras being pointed in the direction of the officers and demonstrators during the course of the evening.

Affiant has seen pictures appearing in the *Stanford Daily* the morning of Sunday, April 11, 1971. He has examined these pictures and determined they depict the location, occurrences and activity during the period of time the felonies of assault on a police officer and assault with a deadly weapon were occurring. A copy of said *Stanford Daily* is attached hereto. Said photographs carry the byline of one Bill Cooke who is also listed on the masthead as a "photo labman" on the *Daily* staff.

Affiant has conversed with James Bonander, a detective of the Palo Alto Police Department, who has informed him that the offices in which the pictures and articles of the *Stanford Daily* are produced are located in the Storke Publications building at Stanford University, Stanford, California, from detective Bonander's personal knowledge and observation. The copy of the *Daily*, dated April 9, 1971, which is attached hereto also lists such building as the headquarters of the paper.

Therefore, affiant believes the pictures observed in the *Stanford Daily* April 12, 1971, as well as other film and negatives taken at that time and place will be located at the above described offices.

That based upon the above facts, your affiant prays that a search warrant be issued with re-

spect to the above location for the seizure of said evidence, and that the same be held under Section 1536 of the Penal Code and disposed of according to law.

[s] Richard Peardon
Richard Peardon

Subscribed and sworn to before
me this 12th day of April, 1971.

[s] J. Barton Phelps
Judge of the Municipal Court

RRH:gl

XVII.

Defendant Brown, Defendant Bergna, or attorneys under the control of Defendant Bergna participated in securing the warrant described above.

XVIII.

On Monday, April 12, at approximately 5:45 p.m., Defendants Bonander, Deisinger, Martin, and Peardon appeared at the offices of *The Stanford Daily* in the Stokes Publications building located on the Stanford University campus. After presenting the search warrant to a staff member of *The Stanford Daily*, these Defendant police officers proceeded to search *The Stanford Daily* offices.

XIX.

The Defendant police officers opened and intensively searched filing cabinets, and desks in the offices of *The Stanford Daily*. They looked at materials on table tops, shelves and desk tops, in waste baskets and cupboards in *The Stanford Daily's* offices.

XX.

Desks in the offices of *The Stanford Daily* that were searched contained rough notes taken by reporters at interviews conducted while gathering news for *The Stanford Daily*. Some of these reporters' notes contained information given in confidence, and on the express understanding that the name of the source would not be disclosed by the staff of *The Stanford Daily*. Because of the search, Defendant police officers were in the position to see these confidential reporters' notes.

XXI.

One or more of Defendant police officers saw, scanned, or read business correspondence of *The Stanford Daily* and personal correspondence of staff members of *The Stanford Daily* by reason of the search. One Defendant police officer searched through a desk drawer containing personal papers and property including a completed income tax return of Plaintiff Kohn.

XXII.

The Defendant police officers also searched through photographic files of *The Stanford Quad*. *The Stanford Quad* is the year book at Stanford University. *The Stanford Quad* is independent and unrelated to *The Stanford Daily*. The photographic files of *The Stanford Quad* were clearly labelled as such. The search of the photographic files of *The Stanford Quad* continued after a Defendant police officer was specifically told that the files in question belonged to *The Stanford Quad*.

XXIII.

After completing their search, the Defendant police officers accounced [sic] that they had not found what they were looking for, and had consequently seized nothing. The Defendant officers left *The Stanford Daily's* offices at approximately 6:30 p.m. The duration of the search was approximately 45 minutes.

XXIV.

Following the search, Plaintiff Robert Litterman spoke with Defendant James Zurcher on the telephone. Mr. Litterman identified himself as a staff member of *The Stanford Daily*, and protested the police search. Chief Zurcher told Litterman that search warrants could be used to search any area where items of evidentiary value might be stored. Chief Zurcher refused to give any assurance that similar searches would not be authorized by him in the future under similar circumstances.

XXV.

After the search, Plaintiff Robert Litterman spoke with Defendant Craig Brown, of the District Attorney's office. Plaintiff Litterman identified himself as a staff member of *The Stanford Daily*. Plaintiff Litterman protested the legality of the search that had taken place. District Attorney Brown said he had assisted in the preparation of the warrant and that the issuance of the warrant and subsequent search was entirely legal. He also said he could give Litterman no assurance that similar searches pursuant to war-

rants issued in the same manner would not take place in the future under similar circumstances.

XXVI.

Upon information and belief, the Defendants, or some of them, intend in the future to seek and issue similar warrants, and conduct similar searches, in similar circumstances.

XXVII.

Apprehension that the Defendants or some of them may again search *The Stanford Daily's* premises jeopardizes the ability of *The Stanford Daily* satisfactorily to cover newsworthy events. The threat of such searches: (1) causes persons participating in meetings, demonstrations and rallies to refuse necessary cooperation to *The Stanford Daily* reporters and photographers thereby making it impossible for them adequately to cover the events; (2) causes persons to refuse to give confidential information to *Stanford Daily* reporters lest such information be disclosed to the police; (3) causes *The Stanford Daily* photographers and reporters to engage in self-censorship in order to avoid producing materials which the police may wish to seize; and (4) renders *The Stanford Daily* unable to maintain notes, files and records, including photographic records, necessary for the fulfillment of *The Stanford Daily's* journalistic function for fear that possession of certain materials will cause the police again to search the offices of *The Stanford Daily*.

First Cause of Action

XXVIII.

Defendants' search of the offices of *The Stanford Daily* pursuant to the warrant was constitutionally invalid under the First, Fourth, and Fourteenth Amendments to the United States Constitution because it is unreasonable *per se* to use a search warrant as a means for securing evidence belonging to and in the exclusive possession of a person or organization, where there has not been demonstrated probable cause to believe that such person or organization has participated in the unlawful activity to which said search relates, particularly when the person or organization is engaged in news gathering and publishing activities themselves protected by the First Amendment.

Second Cause of Action

XXIX.

Defendants have violated Plaintiffs rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution because Plaintiffs were given no opportunity for an adversary hearing prior to the issuance of the warrant and the search of *The Stanford Daily's* offices.

Third Cause of Action

XXX.

Defendants have violated Plaintiff's [sic] rights under the First, Fourth and Fourteenth Amendments to the United States Constitution because:

a. Such a search inhibits and violates the Constitutionally protected interests set forth in paragraph XXVII above; and

b. The police made no judicial showing prior to the search that (i) they lacked alternative sources for the information contained in the materials for which the search was sought; (ii) there was a compelling need for the materials sought; and (iii) the materials could not be obtained by a means less destructive of the freedom of the press protected by the First and Fourteenth Amendments.

Prayer

Wherefore, the Plaintiffs respectfully pray:

1. That the Court declare illegal and unconstitutional the search of the offices of *The Stanford Daily* that took place on April 12, 1971.

2. That the Court permanently enjoin and restrain Defendants, their agents, successors, employees, attorneys and those acting in concert with them or at their direction, from seeking the issuance of, issuing, or executing any warrant to search the offices of *The Stanford Daily*, or the office or residence of any of its staff members for any photographs, negatives, films, reporters' notes, documents or any other material, whether published or unpublished, taken, received, developed or maintained in the course of efforts to gather news, by any person who is a staff member of *The Stanford Daily*.

3. The Court order Defendants to pay Plaintiffs' for counsel fees and costs of suit.

4. That the Court order such relief as may seem just to the Court under the circumstances of this case.

Dated: May 13, 1971

Anthony G. Amsterdam
Jerome B. Falk, Jr.
Robert H. Mnookin
Attorneys for Plaintiffs,
By: Robert H. Mnookin
For attorneys for Plaintiffs

Exhibit "A"

In the Municipal Court for the
Palo Alto-Mountain View Judicial District,
County of Santa Clara,
State of California

[Apr. 21, 1971]

SEARCH WARRANT

The People of the State of California:

To any Peace Officer present
in the County of Santa Clara:

Proof, by affidavit, having been made before me this day by Richard Peardon that there is just, probable and reasonable cause for believing that:

Negatives and photographs and films, evidence material and relevant to the identity of the perpetrators of felonies, to wit, Battery on a Peace Officer and Assault with Deadly Weapon, will be located where described below.

You are therefore commanded, in the daytime, to make immediate search of the premises of *Stanford Daily*, consisting of offices and rooms within the Stokes Publications building, located at Stanford University, County of Santa Clara, State of California, for the personal property described as follows:

- 1) Negatives of films taken at Stanford University Hospital on the evening of April 9, 1971, showing the Sit-In at the Hospital and following events.
- 2) The film used while taking pictures at Stanford University Hospital on April 9, 1971, showing the Sit-In and following events.
- 3) Any pictures which display the events and occurrences at Stanford University Hospital on the evening of April 9, 1971

and if you find the same or any part thereof, to hold such property in your possession under Calif. Penal Code Section 1536.

Given under my hand this 12 day of April A.D. 1971.

[s] J. Barton Phelps
Judge of the Municipal Court

RRH/eak

Exhibit "B"

In the Municipal Court of the
Palo Alto-Mountain View Judicial District,
County of Santa Clara,
State of California

[Apr. 12, 1971]

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

State of California,
County of Santa Clara.

Personally appeared before me this 12th day of April, 1971, Richard Peardon who, on oath, makes complaint, and deposes and says that he has and there is just probable and reasonable cause to believe and he does believe that there is now in the possession of the *Stanford Daily*, and in the possession of its editor and staff members at the offices located within the Storke Publications building, Stanford University, County of Santa Clara, State of California, certain evidence of felonies, to wit, 243 and 245 of the Calif. Penal Code, described as follows:

- 1) Negatives of film taken at Stanford University Hospital the evening of April 9, 1971.
- 2) The film used while taking pictures at the Stanford University Hospital April 9, 1971.
- 3) Any pictures which display the events and occurrences at the Stanford University Hospital April 9, 1971.

Affiant Richard Peardon is an officer with the Palo Alto Police Department. He has had 21½ years experience in police work. Affiant is investigating the assaults with a deadly weapon and batteries on police officers which occurred April 9, 1971, at the Stanford University Hospital, Stanford, California, that evening.

Affiant personally observed officers of the Palo Alto Police Department who had been called to special duty at Stanford University Hospital struck by objects such as legs of chairs and sticks while attempting to control the crowds at that location. Affiant observed and does know their officers were on duty and in uniform at this time attempting to disperse an unlawful assembly and control the crowd. In addition, affiant was himself struck while defending himself after an order to disperse was given by Chief Anderson of the Palo Alto Police Department.

Affiant also personally observed objects including metal tape dispensers being thrown from inside the hospital doors in the direction of police officers outside the hospital. During this period of time affiant personally observed pictures being taken of this activity from directly behind the Palo Alto officers. Affiant personally saw cameras being pointed in the direction of the officers and demonstrators during the course of the evening.

Affiant has seen pictures appearing in the *Stanford Daily* the morning of Sunday, April 11, 1971. He has examined these pictures and determined they depict the location, occurrences and activity during the period of time the felonies of assault on a police officer

and assault with a deadly weapon were occurring. A copy of said *Stanford Daily* is attached hereto. Said photographs carry the byline of one Bill Cooke who is also listed on the masthead as a "photo labman" on the *Daily* staff.

Affiant has conversed with James Bonander, a detective of the Palo Alto Police Department, who has informed him that the offices in which the pictures and articles of the *Stanford Daily* are produced are located in the Storke Publications building at Stanford University, Stanford, California, from detective Bonander's personal knowledge and observation. The copy of the *Daily*, dated April 9, 1971, which is attached hereto also lists such building as the headquarters of the paper.

Therefore, affiant believes the pictures observed in the *Stanford Daily* April 12, 1971, as well as other film and negatives taken at that time and place will be located at the above described offices.

That based upon the above facts, your affiant prays that a search warrant be issued with respect to the above location for the seizure of said evidence, and that the same be held under Section 1536 of the Penal Code and disposed of according to law.

[s] Richard Peardon
Richard Peardon

Subscribed and sworn to before me
this 12th day of April, 1971.

[s] J. Barton Phelps
Judge of the Municipal Court

RRH:gl

In the United States District Court
for the Northern District of California

[Title Omitted in Printing]

[Filed Jun. 2, 1971]

ANSWER TO CIVIL RIGHTS ACTION
COMPLAINT; DEFENSES AND AFFIRMATIVE
DEFENSES

Defendant J. Barton Phelps, individually and as municipal court judge of the Palo Alto-Mountain View Judicial District and defendants Louis P. Bergna and Craig Brown, both individually and as District Attorney and Deputy District Attorney, respectively, all of the County of Santa Clara, State of California, for answer to the complaint allege:

1. In answer to the allegations of Paragraphs II, III, XIV, XVIII, XIX, XX, XXI, XXII, XXIII and XXIV allege that they are without knowledge or information sufficient to form a belief as to the truth of such allegations.

2. In answer to the allegations of Paragraphs V and VI, admit such allegations.

3. In answer to the allegations of Paragraphs I, VII, VIII, IX, X, XI, XII, XXV, XXVII, XXVIII, XXIX and XXX, deny each and every such allegation.

4. In answer to the allegations of Paragraph IV, admit that James Zurcher is Chief of Police of the City of Palo Alto, State of California, and as

to the other allegations of such paragraph, are without knowledge or information sufficient to form a belief as to the truth of such allegations.

5. In answer to the allegations of Paragraph XIII, admit that a violent confrontation occurred on or about the night of April 9, 1971 between officers of the Palo Alto police department and certain demonstrators at or about the Stanford University Hospital at a time when the Palo Alto police department was seeking to disburse an unlawful crowd and to control such crowd; as to the other allegations of such paragraphs, are without knowledge or information sufficient to form a belief as to the truth of such allegations.

6. In answer to the allegations of Paragraph XVII, admit that defendant Craig Brown, in his capacity as Deputy District Attorney, participated solely in the preparation of the affidavit and search warrant, as such documents are set out in the complaint on file herein; denies each and every such other allegation.

7. In answer to the allegations of Paragraph XV, admit that defendant J. Barton Phelps in his capacity as municipal court judge, issued the search warrant set out in the complaint on file herein; denies each and every such other allegation.

8. In answer to the allegations of Paragraph XVI, admit that the affidavit set forth in the complaint on file herein sets forth the facts tending to establish the grounds of the application, or probable

cause for believing that such grounds existed, for the issuance of the search warrant; deny each and every other such allegation.

9. In answer to the allegations of Paragraph XXVI, admit that the defendants Bergna, in his official capacity, and other persons in his office, including defendant Brown, in their official capacity, and that defendant Phelps, in his official capacity, will participate in the seeking of a search warrant and in the issuance of the same, in good faith and in accordance with the applicable provisions of the laws of the State of California, whenever there is reasonable cause to believe that there exists property or things to be seized which consist of any item or constitute any evidence which tends to show a felony has been committed, or tends to show that a particular person has committed a felony; denies each and every other such allegation.

Wherefore, defendants pray for judgment as hereinafter set forth.

*Defenses Under Rule 12(b) of Federal Rules
of Civil Procedure*

10. This court lacks jurisdiction over the subject matter for the reason that such jurisdiction lies only with a three judge federal court under the provisions of section 2281 of Title 28 of the United States Code.

11. This court lacks jurisdiction over the person in that defendants, and each of them, in that such jurisdiction lies only with a three judge federal court

under the provisions of section 2281 of Title 28 of the United States Code.

12. The complaint fails to state a claim against the defendants, and each of them, upon which a relief can be granted.

13. Stanford University has not been joined in this action and is a party which must be joined in this action under Rule 19 in that complete relief cannot be awarded among those already parties, as the Stanford Daily is an integral part of Stanford University.

14. That plaintiffs Felicity A. Barringer, Fred Mann, Edward H. Kohn, Richard Lee Greathouse, Robert Litterman, Hall Daily and Steven G. Ungar are not real parties in interest authorized to prosecute this action within the meaning of Rule 17 of Federal Rules of Civil Procedure.

15. That the Stanford Daily is not the real party in interest authorized to prosecute this action within the meaning of Rule 17 of Federal Rules of Civil Procedure.

Affirmative Defenses

16. That at all times mentioned in the complaint, defendants, and each of them, have acted only in good faith and upon probable cause and only in their official capacity, as distinguished from their individual capacity.

17. That no constitutional privilege exists, either under the Constitution of the United States or of the State of California, where the property or thing

sought to be seized consists of any item or constitutes any evidence which tends to show that a felony has been committed, or tends to show that a particular person has committed a felony, where such seizure is based upon a search warrant issued by a magistrate after a determination that probable cause exists for the issuance of such search warrant.

18. That a compelling interest or need exists to seize property or things consisting of any item or constituting any evidence which tends to show that a felony has been committed, or tends to show that a particular person has committed a felony, providing that it has been determined by a magistrate that probable cause exists for the issuance for a search warrant to cause such seizure.

19. That the Stanford Daily or any members of its staff do not so unequivocally enjoy such a sensitive news source or do not so unequivocally enjoy the trust and confidence of such a sensitive news source that the obtaining of property or things consisting of any item or constituting any evidence which tends to show that a felony has been committed, or tends to show that a particular person has committed a felony, providing that it has been determined by a magistrate that probable cause exists for the issuance of a search warrant to cause a seizure of such property or thing.

20. That this action seeks to restrain the enforcement, operation or execution of a state statute (Penal Code sections 1523 and following, relating to the issuance of search warrants) by restraining the action

of defendants Phelps, Bergna and Brown, being state officers, in the enforcement or execution of such state statutes and as such must be heard and determined by a three judge court.

21. That this action sets forth no grounds for federal intervention in that the courts of the State of California should first be allowed to hear and determine this matter.

22. That plaintiffs Felicity A. Barringer, Fred Mann, Edward H. Kohn, Richard Lee Greathouse, Robert Litterman, Hall Daily and Steven G. Ungar are not real parties in interest authorized to prosecute this action within the meaning of Rule 17 of Federal Rules of Civil Procedure.

23. That the Stanford Daily is not the real party in interest authorized to prosecute this action within the meaning of Rule 17 of Federal Rules of Civil Procedure.

24. That the Stanford Daily has no capacity to sue under section 1983 of Title 42 of the United States Code.

25. That defendants allege on the basis of information and belief that the plaintiffs, and each of them, lack legal capacity to maintain this action.

26. That plaintiffs, and each of them, lack standing to maintain this action in that the alleged deprivation of constitutional rights was suffered, according to the plaintiffs' own statements in the complaint herein, not by the plaintiffs, or any of them, but by a photographer alleged to be Bill Cook.

27. That Plaintiff Stanford Daily is not a "bona fide newspaper" nor a newsgathering agency.

28. That this action is prematurely brought and a cause of action is not stated in that there is no threat, immediate or otherwise, that the defendants, or any of them, will seek, issue, or execute a search warrant similar to the search warrant alleged in the complaint herein.

29. That this action is prematurely brought and the cause of action is not stated in that none of the plaintiffs have found it more difficult to cover news worth [sic] events as a result of the issuance of the search warrant alleged in the complaint herein.

30. That the plaintiffs, and each of them, have come before this court with "unclean hands" in that, according to their own allegations in the complaint herein under Paragraph X, the plaintiffs have followed a policy of not making photographs or negatives voluntarily available to the police or other law enforcement officers and of considering themselves free to destroy any materials in their possession, whether or not such materials constitute evidence that a felony has been committed or that a particular person has committed a felony, thereby forcing the defendants, and each of them, to seek a search warrant to obtain photographs or films of a public event which tend to show that a felony has been committed or tend to show that a particular person has committed a felony.

31. That this action is moot in that the search complained of has taken place, no evidence was seized as a result of such search, and there is no action pending or threatened against the plaintiffs, or any of them.

32. That the plaintiffs, and each of them, have failed to allege that they have complied with the claims procedure of the California Tort Claims Act.

Wherefore, defendants, and each of them, pray for judgment as follows:

1. That the court refuse to declare illegal and unconstitutional any search of the offices of the Stanford Daily that took place on or about April 12, 1971.

2. That the court refuse to permanently enjoin and restrain defendants, their agents, successors, employees, attorneys and those acting in concert with them or at their discretion, from seeking the issuance of, issuing, or executing any warrant to search the offices of the Stanford Daily, or the office or residence of any of its staff members for any photographs, negatives, films, reporters' notes, documents or any other material, whether published or unpublished, taken, received, developed or maintained in the course of efforts to gather news, by any person who is a staff member of the Stanford Daily.

3. That the court refuse to order defendants to pay plaintiffs for counsel fees and costs of suit.

4. That the court dismiss the complaint on file herein, or in the alternative, stay the proceeding in

this court until the courts of the State of California hear and determine this matter.

5. That the court order such other relief as may seem just to the court under the circumstances of this case.

Dated: June 2, 1971.

William M. Siegel,
County Counsel
Selby Brown, Jr.,
Chief Assistant Counsel

[s] Selby Brown, Jr.

In the United States District Court
for the Northern District of California

[Title Omitted In Printing]

[Filed Jun. 9, 1971]

ANSWER TO CIVIL RIGHTS ACTION COMPLAINT;

DEFENSES AND AFFIRMATIVE DEFENSES

Come now defendants James Zurcher, James Bon-
ander, Paul Deisinger, Donald Martin and Richard
Peardon and answer plaintiffs' complaint on file here-
in, and admit, deny and allege as follows:

I

Answering the allegations of paragraphs I, II, VII,
VIII, IX, XI, XII, XIX, XX, XXI, XXII, XXIV,
XXVI, XXVII, XXVIII, designated as First Cause

of Action, XXIX, designated as Second Cause of
Action, and XXX, designated as Third Cause of
Action, these answering defendants deny generally
and specifically, each and every, all and singular, the
allegations therein contained;

II

These answering defendants admit the allegations
of paragraphs IV, V, VI, XVIII and XXIII of said
complaint;

III

Answering the allegations of paragraphs III, XIV,
XVII and XXV, these answering defendants allege
that they do not have sufficient information or belief
to answer the allegations therein contained, and basing
their denial on such lack of information or belief,
deny generally and specifically, each and every, all
and singular, the allegations therein contained;

IV

Answering the allegations of paragraph X of said
complaint, these answering defendants admit that the
Stanford Daily would not voluntarily make unpub-
lished photographs or negatives available to the police
or other law enforcement officers, and further admit
that it was the policy of the *Stanford Daily* to destroy
any such materials in its possession, and other than
said admission, deny generally and specifically, each
and every, all and singular, the allegations contained
in said paragraph;

V

Answering the allegations of paragraph XIII of said complaint, these answering defendants admit there was a sit-in demonstration on April 8, 1971, and April 9, 1971, and further admit that the Palo Alto Police were attacked by demonstrators, and other than said admission, deny generally and specifically, each and every, all and singular, the allegations therein contained;

VI

Answering the allegations of paragraph XV of said complaint, these answering defendants admit that defendant J. Barton Phelps in his capacity as Municipal Court Judge, issued a search warrant as attached to said complaint, and other than said admission, deny generally and specifically, each and every, all and singular, the remaining allegations of said paragraph;

VII

Answering the allegations of paragraph XVI of said complaint, these answering defendants admit that the affidavit set forth in the complaint on file herein sets forth facts tending to establish the grounds of the application or probable cause for believing that such grounds existed for the issuance of a search warrant, and other than said admission, deny generally and specifically, each and every, all and singular, the remaining allegations of said paragraph.

Wherefore defendants pray for judgment as hereinafter set forth.

*Defenses Under Rule 12(b) of the Federal
Rules of Civil Procedure*

VIII

These answering defendants allege that this Court lacks jurisdiction over the subject matter of this action, for the reason that such jurisdiction lies only with the three judge federal court under the provisions of §2281 of Title 28 of the United States Code.

IX

These answering defendants allege that this Court lacks jurisdiction over the person of the defendants, and each of them, in that such jurisdiction lies only with a three judge federal court under the provisions of §2281 of Title 28 of the United States Code.

X

That this complaint and each of the causes of action therein contained, fails to state facts sufficient to constitute a claim or cause of action against these defendants or either of them, upon which the relief sought could be granted.

XI

These answering defendants allege that this Court has no jurisdiction over the subject matter of this action, in that this action seeks to restrain the enforcement, operation or execution of a state statute (Penal Code §1523 and other applicable sections relating to the issuance of search warrants) by restraining the action of defendants, and each of them, being state

officers, in the enforcement or execution of such state statutes and as such must be heard and determined by a three judge court.

As And For a Further and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That at all times mentioned in plaintiffs' complaint, defendants, and each of them, acted only in good faith and upon probable cause and only in their official capacity, as distinguished from their individual capacity.

As And For a Second and Separate Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

No constitutional privilege exists, either under the Constitution of the United States or of the State of California, where the property or thing sought to be seized consists of photographs and films of a public event which tends to show that a felony has been committed or tends to show that a particular person has committed a felony where such seizure is based upon a search warrant issued by a magistrate after determination that probable cause exists for the issuance of such search warrant.

As And For a Third, Separate and Distinct Affirmative Defense to Each and Every Allegation Con-

tained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That a compelling interest or need exists to seize property or things consisting of photographs or films of a public event which tends to show that a felony has been committed or tends to show that a particular person has committed a felony where it has been determined by a magistrate that probable cause exists for the issuance of a search warrant to cause such seizure.

As And For a Fourth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

Neither the *Stanford Daily*, any members of its staff, nor any of the plaintiffs so unequivocally enjoy such a sensitive news source, nor so unequivocally enjoy the trust and confidence of such a sensitive news source that the obtaining of photographs or films of a public event which tends to show that a felony has been committed or tends to show that a particular person has committed a felony where it has been determined by a magistrate that probable cause exists for the issuance of a search warrant to cause a seizure of such property or thing violates any constitutionally protected right or privilege of said *Stanford Daily*, any members of its staff, or any of the plaintiffs.

As And For a Fifth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

This action seeks to restrain the enforcement, operation or execution of a state statute (Penal Code §1523 and other applicable sections) relating to the issuance of search warrants, by restraining the action of the defendants, and each of them, being state officers, in the enforcement or execution of such state statutes and as such must be heard and determined by a three judge court.

As And For a Sixth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

This action sets forth no grounds for federal intervention, and the Courts of the State of California should first be allowed to hear and determine this matter.

As And For a Seventh, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs, and each of them, lack the legal capacity to maintain this action.

As And For An Eighth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained In Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs, and each of them, lack standing to maintain this action, in that the alleged deprivation of constitutional rights was suffered, according to plaintiffs own statements in the complaint on file herein, not by any of the plaintiffs, but by a photographer alleged to be Bill Cook.

As And For a Ninth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiff *Stanford Daily* is not a "bona fide newspaper" nor a news gathering agency.

As And For a Tenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That this action is prematurely brought and a cause of action is not stated, in that there is no threat, immediate or otherwise, that the defendants, or any of them, will seek, issue or execute a search warrant similar to the search warrant alleged in the complaint herein.

As And For An Eleventh, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That this action is prematurely brought and no cause of action is stated, in that plaintiffs, nor either of them, have found it more difficult to cover newsworthy events as a result of the issuance of the search warrant alleged in the complaint on file herein.

As And For a Twelfth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs, and each of them, have come before this Court with "unclean hands" in that, according to their own allegations contained in the complaint on file herein, under paragraph X, the plaintiffs have followed a policy of not making photographs or negatives voluntarily available to the police or other law enforcement officers and of considering themselves free to destroy any materials, or other evidence in their possession, whether or not such materials constitute evidence that a felony has been committed or that a particular person has committed a felony, thereby forcing defendants, and each of them, to seek a search warrant to obtain photographs or films of a public event which tend to show that a felony has been committed or tend to show that a particular person has committed a felony.

As And For a Thirteenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That this action is moot in that the search complained of has taken place, no evidence was seized as a result of such search, and there is no action pending or threatened against the plaintiffs, or any of them.

As And For a Fourteenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs' complaint on file herein, fails to state a cause of action against these defendants, or any of them, in that plaintiffs have failed to show that they have or are suffering irreparable damage.

As And For a Fifteenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs' complaint on file herein, fails to state a cause of action against these defendants, or any of them, in that plaintiffs, by their own allegations are seeking relief on a question that has become moot.

As And For a Sixteenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs' complaint on file herein fails to state a cause of action against these defendants, or any of them, in that said complaint seeks relief against these defendants based upon speculation that some unnamed persons, not in any way associated with these defendants, may at some unknown future time, commit certain acts or violations of law at this undetermined future time;

As And For a Seventeenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That there is no showing that plaintiffs, or any of them, have exhausted their remedies in the State Courts;

As And For An Eighteenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That the relief sought by plaintiffs, and each of them, is too broad, indefinite and vague for this Court to grant all or any part of the relief sought.

Wherefore, defendants, and each of them, pray for judgment as follows:

1. That this Court refuse to declare illegal and unconstitutional any search of the offices of the *Stanford Daily* that took place on or about April 12, 1971;

2. That the Court refuse to permanently enjoin and restrain defendants, their agents, successors, employees, attorneys, and those acting in concert with them or at their discretion, from seeking the issuance of, issuing, or executing any warrant to search the offices of the *Stanford Daily*, or the offices or residences of any of its staff members for any photographs, negatives, films, reporters' notes, documents or any other material, whether published or unpublished, taken, received, developed or maintained in the course of efforts to gather news, by any person who is a staff member of the *Stanford Daily*;

3. That the Court refuse to order defendants, or any of them, to pay plaintiffs for counsel fees or costs of suit;

4. That the Court dismiss the complaint on file herein, or in the alternative, stay the proceedings in this Court until the Courts of the State of California hear and determine this matter;

5. That defendants, and each of them, be awarded their costs of suit and attorney's fees, and for such other relief as may seem just to the court under the circumstances of this case.

Dated, June 8, 1971.

Peter G. Stone, Toff, Gordon & Royce
/s/ Melville A. Toff
Attorneys for Defendants

In the United States District Court
for the Northern District of California

[Title omitted in printing]

[Filed June 19, 1972]

INDEX TO AFFIDAVITS

1. Walter Cronkite
2. Frank P. Haven
3. Donald D. Holt
4. Douglas Kneeland
5. Edward H. Kohn
6. Charles Lyle
7. Fred Mann
8. Gordon Manning
9. Gene Roberts
10. Don Tollefson
11. Steven G. Ungar (May 15, 1971)
12. Steven G. Ungar (January 5, 1972)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

AFFIDAVIT

State of New York
County of New York—ss

WALTER CRONKITE, being duly sworn, deposes
and says:

1. I am a correspondent with CBS News, a division of Columbia Broadcasting System, Inc. My principal assignment since April, 1962, has been as managing editor of the "CBS Evening News with Walter Cronkite", a thirty-minute television news report broadcast five nights each week by the CBS Television Network. In addition, I participate in other broadcasts, including frequent participation as "anchor man" in coverage of such events as space missions and national political conventions and elections. Prior to joining CBS in 1950, I was a reporter/correspondent with United Press International for eleven years covering the Western Front in World War II and the Nuremburg Trials and post-war Moscow.

2. My work involves the preparation, through reading and talking with news sources, of the considerable volume of material necessary for such extemporaneous broadcasts as political conventions, elections, and space missions, and for analytical broadcasts such as my daily radio broadcast. It also in-

volves participation in the determination of which stories should be covered on daily television news broadcasts and how they should be covered and participation in the selection of the news items to be broadcast and reading, correcting, and in some cases, rewriting those items. All of this work entails the exercise of editorial judgment based on an extensive background of information and ideas gathered from a wide variety of sources.

3. I am making this affidavit in support of plaintiffs' action to declare the search of the offices of *The Stanford Daily* on April 12, 1971, by the Palo Alto police to be illegal and unconstitutional and for a permanent injunction prohibiting such future search warrants under the color of law.

4. I have considered in my own mind the effect of the entry by the police, the FBI, or other investigating authorities pursuant to a search warrant on the premises of a functioning broadcast newsroom in which the task of gathering and producing news is being carried out. The consequences of such an occurrence would be total chaos in terms of the ability of the staff to produce honest professional news coverage. It is clear to me that the constitutional guarantee of the First Amendment was intended to prevent these consequences.

5. Broadcast news coverage, much like newspaper reporting, depends on the acquisition of facts, including those gained from confidential sources. Included in news material which is not broadcast, therefore,

is information obtained in confidence or under restrictive conditions from sources that would perhaps be of particular interest to the police, the FBI, or other governmental agencies. It has been my experience that exposure, for whatever reason, of such unpublished information would have the chilling effect of cutting off that source in the future. Further, once a practice has been established that threatens such exposure, the knowledge would have a chilling effect on all other sources which might prefer to remain anonymous. The resulting unavailability of such confidential informants would thus undermine professional news coverage by effectively limiting the available information on which journalism has always depended. While the potential of such a chilling effect is great when more common tools such as the subpoena power are used, the "fishing expedition" nature of a search warrant makes it a particularly dangerous threat.

6. Perhaps the most shocking aspect of *The Stanford Daily* search was the fact that the police were utilizing the offices of the *Daily* to determine the availability of evidence. The extension of the use of the news office from a news gathering function to an investigating agency of the authorities is terrifying. Professional news gathering facilities cannot be permitted to be used as evidence gathering agencies in either criminal or civil proceedings without losing all trace of the independence and integrity on which the journalistic profession is founded. Indeed, the prospects of such searches are particularly frightening

when one considers that radio and television stations are licensed by the Federal Government.

/s/ Walter Cronkite
Walter Cronkite

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

AFFIDAVIT

State of California
County of Los Angeles—ss.

I, FRANK P. HAVEN, state under oath as follows:

1. I am the Managing Editor of the Los Angeles Times. I have held this position for twelve years and I have been a newspaper reporter and editor for in excess of forty years. My duties as Managing Editor essentially consist of overall responsibility for the local, national and foreign news coverage of the Los Angeles Times and the placement of the various news items within each edition of the newspaper.

2. Until a few years ago, the Los Angeles Times and its news gathering staff became involved in litigation between third parties, through the service of subpoenas or otherwise, on very rare occasions, something like two or three times a year. Even on these

rare occasions, the cases usually involved injury or damage to person or property and presented minor problems to our news gathering and reporting capabilities which were not difficult to resolve.

3. In recent years, as civil disorders and confrontations between the police and a wide variety of dissident groups became increasingly frequent, the efforts to entangle the press in these disputes and legal proceedings arising out of them have increased dramatically. To date, this entanglement has consisted of a number of subpoenas duces tecum served on behalf of prosecution and defense, seeking large-scale production of documents relating to a given event.

4. Such use of the subpoena power has not only raised serious operational threats to the ability of a newspaper to publish but strikes at the heart of our most vital freedoms—freedom of speech and press. Since much has been said and written about such consequences, I will only summarize them briefly as follows:

(a) If newspaper records, including those confidential in nature, can be readily obtained through use of the subpoena power, confidential sources of news will quickly evaporate and important information will no longer be available for the information of the public.

(b) To the extent that a newspaper, its personnel and files are used by defense or prosecution, the objective informational role of the newspaper is severely damaged, the credibility of the

newspaper is lost and it comes to be viewed as simply another agent of whichever side has chosen to involve the newspaper.

(c) The personal safety of news reporters is endangered; it is not unusual for newsmen to have their equipment destroyed or damaged and to be physically assaulted because they are viewed as informers.

(c) [sic] As newspapers, their personnel and records are ever increasingly subjected to the subpoena process, their ability to effectively function as a newspaper is impaired for a reporter cannot be out covering newsworthy events while he is tied up in litigation.

That these problems are of the utmost constitutional significance is evidenced by the fact that three cases involving such problems are now pending before the United States Supreme Court.

5. While the subpoena process raises the serious problems outlined above, and more, at least a newspaper receives advance notice of a subpoena and has time to resist through a motion to quash or other appropriate legal proceedings. The use of search warrant procedures, as in the *Stanford Daily* case, introduces an entirely new, and more invidious, threat to freedom of the press. Unlike the subpoena process, a newspaper has no opportunity to resist a search warrant. The newspaper first knows about it when the police present the warrant at the office of the newspaper,

at which point the newspaper is confronted with the choice of violating a court order or opening its files notwithstanding the disastrous consequences.

6. The thorough disruption of day-to-day newspaper operations which would result from subjecting newspapers to the use of search warrant procedures is too obvious to require much elaboration. If law enforcement officers have the power to at any time appear at the office of a newspaper with a search warrant, systematically go through the files of a newspaper relating to a particular event, confiscating those materials which appear to suit their needs, at that point the precise, and often tight, time requirements in publishing a newspaper are disrupted, personnel are diverted from their duties, materials necessary to publish the paper may be taken, and, in a word, the ability, not to mention the constitutional right, of the newspaper to determine what will be published, and when, is put in serious jeopardy.

7. Over and above these operational problems are the constitutional problems outlined above in paragraph 4, all of which are raised in their most aggravated form. On the basis of my forty years of experience as a newspaper man, I can categorically state that if the use of the search warrant procedure against newspapers is not unequivocally declared unconstitutional, and if law enforcement agencies are able to suddenly appear at the office of a newspaper with a search warrant, and thereby become entitled to sift through the files of a newspaper concerning a

given event, summarily confiscating documents or photographs, freedom of the press, as we know it, will no longer exist.

/s/ Frank P. Haven
Frank P. Haven

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

State of New York
County of New York—ss.:

DONALD D. HOLT, being duly sworn, deposes and says:

1. I am the News Editor of Newsweek, a weekly magazine of general circulation throughout the world. As such, I supervise the gathering of news from worldwide sources for Newsweek.

2. This affidavit is submitted in support of a motion for summary judgment by the plaintiffs in the above-entitled action.

3. I have been a member of the staff of Newsweek for nearly eight years. Before becoming News Editor, I was Chief of the Chicago Bureau of Newsweek for five years, in charge of Newsweek's news coverage of ten states. Before joining Newsweek in 1964, I was a newspaper reporter for six years—three years

with the Chicago Daily News and three with the Elmhurst, Illinois, Press, a suburban weekly. I am a graduate of Wheaton College in Illinois.

4. Throughout my career as a working newsman, I have always kept my own notes and other background documents and material confidential, both to protect my sources and to maintain my position of independence of any "side" of a newsworthy event.

5. During the past five years, I have found that the problem of maintaining such confidential records has become increasingly sensitive and difficult. For example, during the 1968 Democratic National Convention in Chicago, and its aftermath, as Newsweek's Chicago Bureau Chief I was besieged by various law enforcement agencies with requests and even subpoenas to produce unpublished information. We successfully resisted furnishing any such information. Had we complied, we would have lost all standing as an independent news medium and, for all practical purposes, would have become an arm of the law enforcement agencies.

6. As a working newsman for 14 years, I find the forced search of a news office, with or without a search warrant, both shocking and dismaying. This—or any—forced disclosure of confidential documents or the names of news sources to law enforcement agencies is, in my view, a serious curtailment of freedom of the press as protected by the First Amendment. I can state categorically that were I subject to any such search, or otherwise forced to make such disclosures,

my ability to continue gathering news to inform the public would be seriously impaired.

/s/ Donald D. Holt
Donald D. Holt

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted In Printing]

AFFIDAVIT OF DOUGLAS E. KNEELAND
State of California
County of San Francisco—ss.

DOUGLAS E. KNEELAND, being duly sworn, deposes and says:

1. I am the roving national correspondent of The New York Times, a position I have held for nineteen months. Prior to that, I was deputy national editor of The Times for fifteen months and midwestern correspondent for slightly more than two years. For the preceding eight years, I was an editor on various news desks of The Times in New York, including the foreign and metropolitan desks. Before joining The Times, I was an editor and reported for The Bangor (Maine) Daily News, The Worcester (Massachusetts) Telegram and The Lorain (Ohio) Journal. I have been a full time journalist for the last twenty years and have had broad experience as a reporter and an editor.

2. I submit this affidavit in support of the motion of the plaintiffs for summary judgment that the search of the Stanford Daily on April 12, 1971 be declared illegal and unconstitutional. As a working newsman, I am vitally concerned that nothing be allowed to interfere with the freedom and integrity of the press or with its members in the performance of their role as the public's eyes and ears at all newsworthy events. If the legality of the April 12 search is upheld, I see no way that any newspaper office in this country or even the very homes of reporters, photographers and editors will be safe from official intrusion.

3. The effect of such a search on a newspaper's ability to fulfill its news gathering function is difficult to overstate. In fact, it is hard to imagine the harmful impact that it could have, because to my knowledge never before in the history of American journalism has a similar search taken place. In our society, newspapers do not exist at the whim of any government, national, state or local. They are not an arm of those governments. Potential news sources know that, as the government should. The knowledge that as a reporter I am independent, and will not be a voluntary agent for any government, provides the basis of a trust without which I could not function effectively. News sources, sometimes within government itself, know that confidential information, which frequently is vital to my understanding of other facts in context, will be treated confidentially. They know that I am functioning as a fair, objective and independent observer, and that I am not taking sides, for or against them, in any conflict in which they are

involved. Many times they hope I will take their side, but I rely on my reputation for fairness, objectivity, and my ability to keep confidences to generate the trust and respect of my sources.

4. If the government is permitted to search newspaper offices or even the homes of newsmen for unpublished photographs, notes, tape recordings or other materials, that trust essential to gathering the news will be effectively destroyed. Because no official has any way of definitely knowing what pictures a photographer has taken or what notes a reporter has jotted in his notebook, such a search smacks of a fishing expedition. And by prowling through a reporter's notebooks or a photographer's files or by rifling their desks, officials will often have access to much material that interests them even though it was outside the material that originally motivated them. At best they will have turned the newsman into an unwilling investigator and at worst into a government spy who reveals confidences. Such a development will not escape the notice of potential news sources, whose trust is based in part at least on the long and honorable tradition of the profession. It will matter not that the newspaper or the individual newsman is an unwilling accomplice of the government. An accomplice he will be, his hardwon reputation for independence shattered. Doors will be closed. And the public will be deprived of much that it has the need and right to know.

5. In my own case, I work frequently at home. I have my files there. I save my notes and other ma-

terials for future reference. Often I will mark a section in a notebook that is confidential or not for attribution. I keep names, home addresses and telephone numbers of sources. Some of these are confidential at their request. My own ability to function as a reporter would be severely impaired if some of these sources believed that I could not keep my given word that I would treat confidentially materials that they entrusted to be or information that they imparted to me—that anything in my possession was subject to a possible government search. The more sophisticated sources know that newsmen may be subject to subpoena; but they also know that recent court opinions provide a basis for lawful challenge to subpoenas. On the other hand the intrusion of a search is indiscriminate; its scope and propriety cannot be judicially tested in advance; and the mere possibility of its use renders vulnerable all confidential materials.

6. During my twenty years in the newspaper business, I have dealt with many matters that required confidentiality, a sensitivity toward the news source's fear of exposure or, at least, the winning of his trust. I have been involved in investigations of the police and of official corruption, for instance. Such investigations are usually conducted with the cooperation of concerned members of the police department or government body. If a police search of my office, my home, my files—instigated perhaps by the very people being investigated—were a real threat, I know I could not have gathered much of the material essential to

stories I have written. I have also covered riots in the cities and other protest activities where it sometimes was necessary to have the confidence of militant blacks, a difficult enough task for any white reporter; an impossible one if it was felt that I was an investigative arm, albeit an unwilling one, of the government. I have written of the radicals in this country both on college campuses and off, in such branches as the G. I. Movement. Moving from one radical group to the next and establishing oneself as a reporter is a ticklish task. Almost no new encounter is without its challenges. No matter whose auspices a reporter appears under there are nearly always some members of a group who are fearful and distrustful to the point where some would describe them as paranoid. If the information gathered, the names of members, addresses, telephone numbers, many of these things given in confidence, were only a search warrant away from any government official, there would be no way that I could have done my job as a reporter.

7. My experience as a reporter and editor had led me to feel strongly that photographs are an important part of the coverage of such events as demonstrations and riots, conveying to the reader the visual impact of what has taken place. Photographers already provide this coverage at great personal risk, considering the volatility of such situations. In many instances that I have witnessed, especially at protest demonstrations or riots, they are in particular danger. Their equipment alone makes them highly visible and a common police practice of having their own photographers

pose as newsmen frequently makes anyone with a camera suspect in the eyes of political activists. If added to this were the knowledge that the police might have easy access to the unpublished film of legitimate news photographers, their position, I believe, would become untenable and their ability to cover such events jeopardized.

8. In sum, I am deeply certain, from my own experience, that a search such as that permitted in the offices of the Stanford Daily, allowed to stand, will do irreparable damage to the free press of this nation. If that happens, it will be the American public, whom newspapers and newsmen serve, that will be most severely deprived.

/s/ Douglas E. Kneeland
Douglas E. Kneeland

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted In Printing]

AFFIDAVIT OF EDWARD H. KOHN
State of California
County of San Francisco—ss.

EDWARD H. KOHN, being duly sworn, deposes and says:

1. My name is Edward H. Kohn. I am an undergraduate student at Stanford University. I am Man-

aging Editor of *The Stanford Daily* (hereinafter referred to as "*Daily*" or "*The Daily*"), a member of the News Committee of the Associated Press Managing Editors Association, and a stringer (part-time correspondent) for *The Washington Post*.

2. At 5:30 P.M. on April 12, 1971, I was sitting in the Editor's portion of the *Daily* newsroom, located in the Storke Student Publications building on the Stanford University campus. At that time I was a staff member of the *Daily*.

3. Between 5:45 and 5:50 P.M. on that date, I became aware of a disturbance at the front of the office near the front door.

4. Between 5:45 and 5:50 P.M. on that date, Ralph Kostant, a staff member of the *Daily*, advised me to come to the door, saying that "there are some men here who want to 'speak with somebody in charge.'"

5. I turned around, and I observed two men, whom I thought were policemen.

6. As I approached the door, one man carrying what appeared to be a clipboard asked me if I was "in charge" of the office. I replied that I was not, and that I was not the editor but only a staff member and that only the editor could really be in charge of an office.

7. This man then displayed what he said was a search warrant and said he wanted to search the office. I asked him to hold the warrant steady for a moment, and he did so, saying that I would get a carbon of the document.

8. At this point, another student in the office went to call an attorney and to get ahold of Felicity Barringer, the editor.

9. I then read through the search warrant. At that time, I saw no way to prevent a search of the office, and I did not resist or interfere with the officers' subsequent search.

10. I asked the officers—there were six at this point, four from the Palo Alto Police Department and two from the Stanford Police Department, with three of the Palo Alto Police Department officers in plainclothes and the remainder of the officers in uniforms—to wait for a moment while I continued to attempt to contact the editor, Felicity Barringer.

11. I talked briefly with a lawyer, and he told me that there was nothing I could do to stop the search if the warrant appeared legal. I replied that it did, and he (Wolpman) said that he would be right over.

12. At this point, Kostant said that he could not contact Felicity—she was in a class and couldn't be reached.

13. I then attempted to contact Presidential Legal Advisor James V. Siena.

14. I then returned to the door, told the officer that I could not contact the editor, and he informed me that he was "going to go ahead and search anyway." I replied that there appeared to be nothing that I could do to stop him, and offered to explain the layout of the office in the hopes of preventing him from searching the Stanford "*Quad*" offices, which share part of a darkroom facility with the *Daily*.

15. This officer ignored me, and I followed him down to the photo lab. When I entered the lab, I noticed that another detective had already begun to search. At this time, the second detective was searching through a waste box located in the *Daily* darkroom. The other officer began to go through, drawer by drawer, negative by negative, print by print, contact sheet by contact sheet, the "*Quad*" files, which are located in a shared area of the darkroom.

16. I asked other *Daily* staffers to watch the policemen.

17. I then returned to the darkroom, where the two detectives were still going through the *Daily* darkroom and the "*Quad*" files.

18. I then went into the Business Office for the purpose of calling Siena again—there were no free phone lines in the *Daily* office proper. At that time there were no officers in the Business Office.

19. I made the rounds of the offices again—the darkroom, the News Office, my office, the hallway outside the door, to make sure that *Daily* people were watching all phases of the search.

20. I then returned to the Business Office to use the phone again. This time, I noted that two officers were going through the papers located on top of the filing cabinets near the corner of the room near the Addressograph office. One of them asked me what was in the locked file cabinet, and I replied that there were only back copies of the paper. While in the Business Office, I also observed the search of three

desks, including the one belonging to Brian Hardy, Business Manager, and those used by some of the ad salespeople. I observed the officers open all the desk drawers that were unlocked, and search through the materials inside. In numerous instances, the officers appeared to be reading the material they were going through.

21. At about 6:20 P.M. while I was sitting behind Felicity Barringer's desk, an officer of the Palo Alto Police Department approached and indicated he wanted to search Felicity Barringer's desk. This officer went through Barringer's desk, and I saw him noticeably pause to read certain pieces of correspondence that were clearly visible to me.

22. I observed this same officer also search through other desks including the one belonging to Fred Mann, Managing Editor.

23. At approximately 6:30 P.M. the five remaining officers left the premises.

24. I also had a desk in the *Daily* newsroom. After the search, I went to my desk, and I could see that it too had been searched because things had been rearranged. At this time, in my top desk drawer, was a Xerox of my complete 1970 income tax returns.

25. As a reporter for *The Stanford Daily*, I was present at the demonstrations that took place at the Stanford Hospital on April 8, 1971 and April 9, 1971. On April 9, at the demonstration, I specifically recall seeing two uniformed Palo Alto police officers actively operating a video tape machine filming the demon-

stration. At the same demonstration, I recall seeing several other photographers. One was a stout gentleman from the *San Jose Mercury* who went into the corridor of the hospital with the second wave of policemen and sheriff's deputies. Another was Chuck Painter of the Stanford University News Service. A third was a photographer from the *Palo Alto Times*. I also recall seeing a photographer who said he was from the Associated Press.

26. As a reporter for *The Stanford Daily*, I have covered many student demonstrations. I specifically recall observing on several occasions police photographers at these demonstrations on the Stanford University campus. In particular, I recall seeing police photographers at the anti-Pompidou demonstration at the Stanford Linear Accelerator Center (SLAC) on February 27, 1970; at the two demonstrations at the Athletic Department ROTC Building during April, 1970; and during the April 21, 1972 day-long demonstration following the renewed bombing of Viet Nam. In addition, as I noted above, I also recall seeing police photographers at the Stanford Hospital demonstrations that took place in April, 1971.

27. It is impossible for any newspaper or any other communications medium to effectively gather and accurately and objectively to report the news if it is subject to, or threatened by, police intimidation, harrassment, and/or search. This is particularly true for student-run college newspapers because of their traditional, albeit inaccurate, characterization as sec-

ond rate newspapers. Thinking that their reporters and photographers are less respected by police, therefore more subject to police interference, editors may refrain from making certain assignments, for fear that the fruits of the reporter's or photographer's efforts may be obtained by police agencies.

28. Threat of police interference also makes it difficult to work with persons who, for one reason or another, may desire anonymity [sic] or partial attribution. The student reporters feel threatened; they think that the police are less hesitant to use the work product of student reporters than the work product of older reporters and they resent doing the police department's work—willingly or unwillingly.

Executed this 9th day of June, 1972 at San Francisco, California.

/s/ Edward H. Kohn
Edward H. Kohn

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted In Printing]

AFFIDAVIT OF CHARLES LYLE

CHARLES LYLE, being duly sworn, deposes and says:

1. This fall I will be a Junior at Stanford University, majoring in Communications. I have been a

photographer for the Stanford Daily since February of 1971. I have worked steadily for the Daily since, and was "promoted" to Photo Editor in September (autumn quarter) of 1971. I presently hold that position. I have, in this period, covered most of the major demonstrations that involved the Stanford campus or Stanford students.

2. The Computer Center demonstration which took place in February of 1971, was my second assignment for the Daily, and at that time, I was unaware of the radical's feelings towards photographers, and how difficult it was to cover demonstrations. I entered the Computation Center building that was being held by the demonstrators, with the intent of taking photos. When I raised my camera to my eye to take a light reading, I was told by a demonstrator that I would have to leave, since I had a camera.

3. I also covered the demonstrations at the Medical Center on April 8 as a Daily photographer. At first I was able to photograph pictures of the occupation of the lounge. When I returned later that night, the demonstrators had decided to sit-in for the night. Upon pulling my cameras out, I was told that no photographs would be taken, and that this policy had been decided earlier, as they didn't want photographs to be used against them. I was not present at the Medical Center on April 9 when the violence occurred between the police and the demonstrators.

4. Since the search of the Daily, as Photo Editor, I have had staff photographers refuse to cover dem-

onstrations for fear of injury to either their persons or their equipment.

5. Since the search I have covered many demonstrations and rallies [sic] for the Daily. Many Stanford radicals realized that I am a Daily photographer, and that it is our policy not to turn over to the authorities our photographs. Still, they are very sensitive about having their pictures taken. I find therefore, that I must use a great deal of discretion when taking photos of radicals. For example, I do not as a general rule, shoot pictures of crowd scenes showing their faces when they're milling round, in part because such pictures are rarely newsworthy, but also because I fear the authorities might try to forcibly obtain the photos, and thus jeopardize the Daily's ability to cover such events.

Signed this 18th day of June, 1972.

/s/ Charles E. Lyle
Charles E. Lyle

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted In Printing]

AFFIDAVIT OF FRED MANN

FRED MANN, being duly sworn, deposes and says:

1. I have worked on the Stanford Daily since the fall of 1968, first as a sports writer, later as a sports

editor, editorial board member, and general reporter. From January of 1971 through June of 1971 I was managing editor of the Stanford Daily, and from September of 1971 through January of 1972 I was Editor of the paper. At the present time I am a staff member for the Daily and a member of the editorial board. For the past year I have spent an average of forty hours a week working for the Stanford Daily. I plan to make a career in journalism, and I have been a Communications major at Stanford University.

2. The Stanford Daily is an unincorporated association consisting of Stanford University students who produce the newspaper known as the Stanford Daily.

3. The offices of the Daily are located in the Storke Student Publications Building on the main campus of Stanford University.

4. During the autumn, winter and spring quarters of the academic year (late September through the middle of June), the Stanford Daily is published five days a week, Monday through Friday. During the summer quarter (middle of June through August), the Stanford Daily is published twice a week. The Stanford Daily's average daily press run for the 1970-71 regular academic year (September, 1970 through June, 1971) was approximately 13,000 copies. For 1971-72, the average daily press run was 15,000. The daily readership for 1970-71 was approximately 20,000 persons, and it is estimated that the readership at the present time exceeds that for the 1970-71 academic year.

5. The editorial contents of the paper and the duties of the editorial staff are controlled and supervised by a student Editor. The Editor is elected by the entire editorial staff and part of the business staff of the Stanford Daily every January and May. The editorial policy of the paper is controlled by a board known as the Editorial Board. This Board is composed of staff members who are selected by the Editor at the beginning of his or her term. The membership of the Editorial Board is subject to alteration at any time by the Editor.

6. A breakdown of the sources of revenue of the Stanford Daily is shown in Exhibit A, which is incorporated herein. The business affairs of the Stanford Daily, including the determination of advertising rates, and the level of staff salaries, are under the direct control of the Business Manager. The Stanford Daily has its own checking and savings accounts, monies from which to be drawn by the Business Manager. The Stanford Daily keeps its own books.

7. During the past three years, the Stanford Daily has paid small salaries to its staff members. Staff members do not receive academic credit from Stanford University for their work on the Stanford Daily.

8. The Stanford Daily Publishing Board is a seven man board with the following composition: the Editor and the Business Manager of the Stanford Daily; two students representing Student Senate of the Associated Students of Stanford University (A.S.S.U.); the A.S.S.U. Student Financial Manager; and two

non-students from the University community. The Stanford Daily Publishing Board periodically reviews the financial condition of the paper. It also supervises the election of the editor by the editorial staff. The Stanford Daily Publishing Board does not make the business or editorial policy decisions of the paper. During the academic year 1970-71, the board met no more than 6 times. During 1971-72, the Board did not meet at all.

9. Student publications at Stanford University, including the Stanford Daily, are represented on and subject to the A.S.S.U. Publications Board. A true copy of the current bylaws of the A.S.S.U. Publications Board, found in Article VI, § 6.09 of the Constitution and Bylaws of the Associated Students of Stanford University, is Exhibit B to this stipulation, and incorporated herein. The A.S.S.U. Publications Board is responsible for settling disputes between various publications, and overseeing the use and maintenance and the Storke Student Publications Building, in which the Stanford Daily, like other student publications, has offices. However, the A.S.S.U. Publications Board has no power to displace the Stanford Daily from its offices as long as it continues to publish and operate the newspaper. Neither the A.S.S.U. nor the A.S.S.U. Publications Board exercises financial or editorial control of the Stanford Daily.

10. The Stanford Daily itself presently has no official bylaws. The Stanford Daily Publishing Board did have bylaws, a copy of which is attached as Exhibit C to this stipulation, that were adopted

pursuant to the now repealed 1968 Constitution of the A.S.S.U. A new Constitution was approved by the Stanford Student Body in 1970, but bylaws pursuant to the current Constitution have not yet been adopted.

11. Neither Stanford University, nor any of its officers, control or supervise the editorial policy of the Stanford Daily or its financial management. I know of no written document nor any policy or agreement that indicates that Stanford University or its Board of Trustees has control over such policies of the Stanford Daily. The only money payment from Stanford University to the Stanford Daily is that amount paid by the University for faculty and staff subscriptions to the Stanford Daily. As is shown in Exhibit A, for the academic year 1970-71, this amount was \$18,000 and constituted approximately 10% of the total revenue of the Stanford Daily.

12. The Stanford Daily publishes news covering Stanford University, the surrounding community and other matters. The Stanford Daily has provided continuing coverage of campus political activities of all descriptions, including meetings, speeches, rallies, demonstrations, confrontations and sit-ins.

13. Plaintiffs Felicity A. Barringer, Edward H. Kohn, Richard Lee Greathouse, Robert Litterman, Hall Daily, Steven G. Unger and I were officers or staff members of the Stanford Daily at the time of the search of the Daily's offices on April 12, 1971.

14. Plaintiffs Edward H. Kohn, Robert Litterman, Hall Daily and I are now staff members of the Stanford Daily.

15. The sit-in demonstrations that began at the Stanford University Hospital on Thursday, April 8, 1971 and continued until the evening of Friday, April 9, 1971.

16. The Stanford Daily had two photographers, Bill Cooke and Charles Lyle assigned to cover the events at the hospital. Each had been a staff photographer for the Stanford Daily for more than six months.

17. Photographs of the demonstration taken by the Stanford Daily's photographer, Bill Cooke, appeared in a special Sunday (April 11, 1971) edition of the Daily, a copy of which is attached as Exhibit D.

18. To my knowledge at the time of the search, there was no evidence and defendants had no evidence tending to show that the Stanford Daily, its staff, or any of the plaintiffs in this case were in any personally involved in any unlawful acts at the demonstration and ensuing violence at the Stanford University Hospital.

19. The two editorials attached as Exhibits E and F are true copies of editorials printed in the Stanford Daily on the dates shown thereon.

20. Although in the absence of the service of a subpoena the Daily considers itself free to dispose of or destroy any of its property, including unpublished materials or photographs, it is the policy of the Daily not to destroy any material covered by a judicially authorized subpoena and, to my knowledge, no such destruction has ever occurred.

21. During my tenure on the Daily, it has been the policy of the Daily to choose photographs for publication solely on the basis of newsworthiness and without regard to whether the photographs might be incriminating to the persons depicted therein. The Daily in fact publishes photographs that might be thought to be potentially incriminating. Without being exhaustive, the photographs published on the following dates (while I was either Managing Editor or Editor), were potentially incriminating:

February 1, 1971—page 1—Picture of a student being physically lofted over a crowd into a "closed" judicial hearing room by supporters of the defendants on trial. She was threatened with punishment.

May 6, 1971—page 1—Prof. Robert McAfee Brown blocking the entrance to the San Mateo County draft board building in protest of the war.

May 12, 1971—page 1—B. Davey Napier, Dean of the Stanford Chapel, similarly blocking the draft board doors.

May 17, 1971—page 1—Destruction in the student union drug store after an attack by vandals.

September 27, 1971—page 1—A picture of the People's Park confrontation in Berkeley last year.

September 28, 1971—page 1—Bruce Franklin arguing with Lt. Don Tamm of the Santa Clara Sheriff's Dept. at the Stanford Computer Center on the day of the violence there. Franklin obviously, was already in trouble over the incident, but those in the background have been tried under campus judicial proceedings, if identified.

October 12, 1971—page 1—demonstrations at the Franklin hearings. Again, possible prosecution under campus rules.

October 19, 1971—page 1—Demonstration and disruption of a Hoover Institute conference on Iran by Iranian students and radicals.

October 28, 1971—page 1—Franklin, Tamm, and crowd at Comp. Center.

November 4, 1971—page 1—Occupation of the campus Placement Center by radicals. Numerous charges have been filed against the disruptors for this incident.

November 5, 1971—page 1—Same as the day before, but a different picture.

November 8, 1971—page 1—Group of fans tearing down the football goal posts following the clinching of the Rose Bowl bid. The police did try to stop people from doing it, and two warnings were given before the game ended.

November 9, 1971—page 3—Demonstrations at the Franklin hearings.

January 17, 1972—page 1—Placement Center demonstration, inside the building.

January 18, 1972—page 6—Franklin teaching a class after being found guilty by Advisory Board—a violation of at least the spirit of the decision, if not the letter. It was felt the University could have taken additional action against him.

January 20, 1972—page 1—Demonstration and sit-in in the President's office.

January 24, 1972—page 5—Demonstration in San Francisco outside the Trustees' meeting firing Franklin. Arrests were made.

January 25, 1972—page 6—Franklin in the Faculty at an "eat-in." Campus judicial proceedings were brought against some in this demonstration.

January 27, 1972—page 1—Two pictures of the Placement Center demonstrations.

22. Although occasionally our photographers have been intimidated and even shoved around, the policy of letting it be known that we would not allow the Daily to become an investigative arm of the police has provided us with closer access to demonstrators and others making the news. We hold more of a position of trust among radical groups than papers from off campus, and as a result have been able to cover news of their actions more closely and more accurately than any of the other media in the area. As Daily editorials indicate, we often differ with revolutionary actions, but we give them coverage that they find the least biased of any medium.

23. The importance of photographs to our news coverage is undeniable. For any newspaper, a story of action is not complete with words alone. The camera can often catch truth more easily than can the written word. No description of a beating or a fire can match the actual sight of the action through a picture. Readers expect photo coverage of events, and the Daily has been fortunate to have excellent people taking pictures and presenting a well-rounded account of protests and demonstrations.

24. The Daily cannot operate under pressure from outside forces, be they radical groups, minority group demands, or interference from government and

police. The search of the Daily offices by Palo Alto police disrupted activity here for the following four days with emergency editorial board meetings, numerous calls and letters, and at least four TV interview-camera teams invading the office. People were placed under a great strain, the editor was tied up day and night with related incidents, and the entire paper suffered. We were overtime on our press deadline, and we raised the ire of the type setting shop for our late hours and poor organization.

25. The search was disruptive in another sense also. At the time of the April 12, 1971 search, as a Managing Editor, I had a desk in the Daily's office. In my desk, I kept my notes from various interviews I had made with news sources. Some of the information in these notes had been given to me in confidence, and on the express understanding that I would reveal neither the source nor the information. Confidential information and confidential sources are of great importance in terms of my ability to function as a reporter—they often provide the background information essential to effective reporting. If sources thought confidential information would be made available to the police, they certainly wouldn't give me such information, and my ability to function as a reporter would be diminished. The search of the Daily's office, and the threat of its repetition—with the possibility of police access to information given in confidence—puts in jeopardy our newspaper's capacity to gather and report the news.

26. Furthermore, a paper loses all credibility when it acts or is compelled to act in the express interests

of one group against another. The ideal of objectivity may be a myth, but the struggle to reach that idealistic goal is imperative for all papers from the New York Times to any college paper. In addition, the readers of the Daily are basically liberal and many of them would and do object to the official campus newspaper operating as an "evidence organ" for the police in a controversial case of human rights. Whether the demonstrators at the Stanford Hospital or any other site were right or wrong in their protest is not the point; the Daily attempts to cover the story and present as clear a picture as possible. We do not attempt to "bring Law-breakers to justice" through our news coverage, although at times we might editorially think that that should be done. Any interference with the Daily's operation and its organizational philosophy truly cripples the newspaper as an effective and unbiased disseminator of information.

Executed this 16th day of June, 1972.

/s/ Fred Mann
Fred Mann

(Jurat omitted in printing)

Exhibit A

**THE STANFORD DAILY
BREAKDOWN OF INCOME**

	1969-70	1970-71		
	<u>1969-70</u>	<u>Percentage</u>	<u>1970-71</u>	<u>Percentage</u>
ADVERTISING INCOME:				
National	19,970	15%	17,815	10%
Local	68,890	51%	76,723	44%
Classified	12,358	12%	18,310	10%
Sub-Total	\$ 101,218	78%	\$ 112,848	64%
SUBSCRIPTION INCOME:				
Student Subs.	27,641	20%	35,883	20%
Faculty-Staff Subs.	0	0	18,000	10%
Off-Campus Subs.	5,688	.75%	5,869	3%
Sub-Total	33,329	20.75%	59,752	33%
OTHER INCOME:	681	.25%	3,587	3%
Sub-Total	\$ 681	.25%	\$ 3,587	3%
TOTALS	<u>\$ 135,228</u>	<u>100%</u>	<u>\$ 176,187</u>	<u>100%</u>

Exhibit B

Section 6.09: Publications Board

A. Function

There shall be an administration board known as the Publications Board in which the general control of all student publications shall be vested.

B. Membership

1. The members of the Publications Board shall be:

- a. The editors and business managers of the *Stanford Chaparral, Daily, Quad, and Sequoia.*
- b. The manager of the Stanford Blotter.
- c. Three (3) members of the Senate appointed by the President.
- d. The Student Financial Manager and the Vice-President of this Association.
- e. A faculty representative of the Department of Communications.
- f. The Business Manager of Stanford University.
- g. The Director of the Stanford University Press.
- h. The Editor of the Stanford Workshop.

Each member shall have one vote. The President of this Association, the Station Manager of KZSU and the editors and business mana-

gers of non-official ASSU publications shall be ex-officio members without vote.

C. Officers

The officers of Publications Board shall be a Chairman and a Secretary, who shall be elected by the Board in Spring Quarter to serve the following academic year.

1. The duties of the Chairman shall be:

- a. To call and preside at all meetings of the Publications Board, and to carry out all actions passed by the Board,

- (1) to set the agendas for these meetings,

- (2) to represent the Board between meetings,

- (3) to vote only in case of tie;

- b. To oversee the proper use of all publications' funds.

- (1) to act as Publications Board Manager,

- (2) to oversee the expenditures from all improvement funds,

- (3) to be responsible for the closing of any open accounts from the past years' publications;

- c. to oversee the use and maintenance of Storke Student Publications Building, subject to guidelines set by Publications Board;

- d. to assure the enforcement of the By-Laws and Standing Rules of A.S.S.U. where publications are concerned;

- e. to serve as an impartial arbitrator in inter- or intra-publication disputes;

- f. to represent the Board and publications to the University in questions of finance or editorial policy.

2. The secretary shall keep minutes of each meeting and prepare these minutes for submission to the Senate.

D. Whenever an individual publication shall deem itself to be adversely affected by an action of the Board, it shall have the right to appeal the Board's action to the Senate, whose decision in the matter shall be final. All actions of the Board shall be determined by a majority vote unless otherwise provided.

E. Immediate Financial and Editorial Control

The immediate financial and editorial control of each publication shall be in a body local to that publication. Such bodies and the rules governing them shall be in the Standing Rules of this Board.

F. Amendments

1. Publications Board, upon a two-thirds vote of Publications Board and a majority vote of the Senate, provided that the changes

have been presented at the previous regular Senate meeting.

2. A three-fourths vote of the Senate, provided that the changes have been presented at the previous regular Senate meeting.

G. Publications Board Subcommittee

1. The Publications Board Subcommittee shall be composed of the chairman of Publications Board, an editor of one of the official A.S.S.U. publications and a business manager of one of the official A.S.S.U. publications. The latter two members shall be elected by Publications Board.
2. The Publications Board Subcommittee shall be empowered to act in behalf of Publications Board between regularly scheduled meetings of the Publications Board in the following functions: approval of distribution dates, granting of permission for distribution of spontaneous publications, granting of funds from the Assistance Fund as provided in Article III, Section 8, paragraph 6 of the Publications Board Standing Rules.

Exhibit C

ARTICLE VI: STANFORD DAILY

SECTION 1: Purposes

The Stanford Daily Publishing Board, as agent for this Association, will publish throughout the year a newspaper for the purpose of:

- a. Informing the Stanford community of university news.
- b. Printing other news of interest to the community.
- c. Printing opinions of interest to the community, provided that the Stanford Daily maintains high standards of objectivity and fairness by separating news from editorial opinion and giving persons with conflicting opinions reasonable opportunity to reply.

SECTION 2: Board Membership

a. The Publishing Board will consist of the editor, the business manager, the student financial manager, two persons employed by Stanford University when joining the Board but not registered as students, and two students who are members of the Legislature chosen in May by LASSU, one of whom will serve as chairman of the Board. Board members shall serve one-year terms beginning June 1, except for the editor, who will join the Board upon assuming office.

b. The two non-student members will be chosen by a vote in May of the editor, the editor-elect if

designated during May, the business manager, the business manager designate, the student financial manager, the student financial manager designate, with the present chairman voting in case of tie.

c. Vacancies among the non-student members or chairman will be filled by a vote of the editor, business manager and student financial manager.

d. Board membership will not be a paid position.

e. Quorum for board meetings will be four.

SECTION 3: Board Powers.

a. The Board will be responsible for carrying out the purposes of the Stanford Daily as listed in Section 1 of this article, and will exercise publisher's control over the Daily except that certain powers will be reserved the editor and the editorial staff as specified below.

b. The Board will elect a business manager in April to serve one year beginning June 1, who will exercise responsibility for the production, sales and distribution as provided by the Board. The business manager may be dismissed by a vote of five members and a successor chosen to serve the remainder of the term.

c. The Board may dismiss an editor by vote of five for repeated actions which contradict the purposes of the Stanford Daily as listed in Section 1 of this article, and conduct an election among the editorial staff to replace him.

d. The Board will supervise the election of the editor according to the procedures specified herein, and will set the editor's term in office, provided the term does not exceed 12 months, and provided no such decision affects an incumbent editor.

e. The Board will authorize payment of salaries for the editorial and business staffs and will maintain a staff list, Operating Rules and Procedures for the Stanford Daily, and written public minutes of all meetings.

SECTION 4: Staff Membership

a. The editorial and news content of the Stanford Daily and the duties of the editorial staff will be controlled by an editor, nominated and elected by the editorial staff.

b. The editorial staff, specified in a staff member list prepared monthly by the editor and submitted to the Board, will consist of those persons (1) who have worked under the editor for a period of not less than two months immediately prior to designation as a staff member, and who have worked at least thirty hours during that two-month period; and (2) those persons who were staff members at some time within the previous year and are currently working under the editor.

c. The editor may delete a person's name from the staff member list at any time, but that person may appeal this action to the Board, which, by vote of five, may restore that person to the staff member

list; but the Board may under no circumstances specify the duties of the staff member in question.

d. The Board, by vote of five, may delete a name from the staff member list if the person in question has not worked under the editor regularly during the previous two months, excluding summer months.

e. The editor, in each staff member list, will designate not more than 10 senior editors and any number of junior editors, the remainder of the list consisting of regular staff members. No person will be designated a senior editor without having appeared on a previous list as a junior editor.

SECTION 5: Election of Editor

a. The Board will set a deadline for nominations for editor not less than two weeks before the beginning of the next editor's term and will set a date for the election not less than one week before the beginning of the next editor's term.

b. The staff member list prior to the list in effect on the date of election will be valid for nomination and election procedures. The senior editors and the editor will convene as a committee to nominate candidates for the election. A candidate may also be nominated by a petition to the Board signed by one-third of the staff members. No person shall be a candidate who is not at least a junior editor.

c. In the election the editor will have four votes, the senior editors three, the junior editors two

and the other staff members one. Vote will be by secret ballot, supervised by the Board.

d. Each staff member will vote for one less person than there are candidates, indicating his first, second, and subsequent preferences. If no candidate receives a majority of first-place votes:

(1) the candidate receiving the fewest first-place votes will be dropped, and his first-place votes distributed among the remaining candidates according to the second-place preferences listed on those ballots.

(2) this procedure will be continued until one candidate receives a majority of first-place votes.

e. Should the editor resign or be dismissed, the Board will immediately request the senior editors to convene as a nominating committee and proceed with an election for an editor to serve the remainder of the former editor's term, except that the Board may appoint an interim successor should the vacancy occur in June, July, August or September.

Exhibit D

The Stanford Daily

Sunday, April 11, 1971 Stanford, California

Volume 159, Number 34A

Police Break Up Hospital Sit-in

By Ed Kohn

Clubswinging Palo Alto police and Santa Clara County Sheriff's Deputies cleared about 60 demonstrators from an administrative corridor at Stanford Hospital during a near-riot early Friday evening, ending a 30-hour sit-in.

Twenty-three persons, including the chairman of the Black Students' Union (BSU) and a candidate for the Palo Alto City Council, were arrested on a variety of charges that include assault with a deadly weapon, conspiracy, assault on a police officer, all felonies; malicious mischief, unlawful assembly, obstructing a police officer, failure to disperse and refusal to leave a public building after being ordered to do so (misdemeanors).

About two dozen demonstrators, not all of whom were arrested, and 13 police officers were reported injured. Most of the demonstrators suffered head and hand injuries after being clubbed by the police, while most of the police and sheriff's deputies were injured by flying glass, ashtrays, staplers, telephone books, table legs and other missiles.

The administrative offices where the demonstrators barricaded themselves were in shambles. Broken elec-

tric typewriters were strewn across floors; broken glass and water was under foot everywhere; furniture was damaged beyond recognition. Deputy hospital director Frank Vitale estimated damage at about \$100,000.

Alarms Set

Campus police reported 11 false fire alarms, five bomb threats—including two at the hospital—and two trash fires following the arrests. Three fire bombs were thrown at a PG&E substation near the Women's Gym early Saturday morning, but no damage was reported.

Palo Alto Police Chief James Zurcher said that 65 Palo Alto police were deployed. They were supplemented by 110 sheriff's deputies under a mutual aid agreement.

All of the adults arrested were released on bail or bond late Saturday night. The three minors arrested will remain in custody until Monday.

The adults will be arraigned at 10 a.m., April 21 at the North County Courthouse.

The near-riot—by far the most violent situation on campus since last spring—erupted over the firing of a black hospital custodian, Sam Bridges. [See accompanying story.] The demonstrators barricaded themselves in the offices of hospital director Dr. Thomas Gonda in an attempt to obtain Bridges' reinstatement.

The Black United Front (BUF), a coalition that includes the BSU, began the tense sit-in Thursday

afternoon after an apparent misunderstanding with Gonda about the form his response to its demands—including the immediate reinstatement of Bridges—was to take. Gonda later agreed to comply with all BUF demands except the reinstatement of Bridges.

Barricades Established

However, the BUF-administration negotiations broke down and shortly before 5 p.m. Friday, 60 of the demonstrators decided to remain in Gonda's office.

Hearing that at least one busload of police was on the way, they began to build barricades at both ends of the corridor. The demonstrators used desks, chairs, filing cabinets, table tops and other pieces of furniture to effectively barricade both sets of reinforced plate glass doors.

At about 5:45 p.m., police units moved in, blocking off exits at both ends of the corridor. Vitale demanded that the group immediately vacate the premises, saying that it was interfering with the orderly functioning of the hospital. Assistant Palo Alto Police Chief Anderson repeated the order to leave the premises, and gave the group five minutes to do so without facing arrest.

At 5:59 p.m., Anderson called in to BSU chairman Willie Newberry: "Then you're not going to leave?"

The reply shouted back at Anderson was a loud "Right on!"

Battering Ram

Police then produced a six-foot battering ram, which they apparently obtained from the hospital's

maintenance plant, and unsuccessfully began to attack one of the reinforced glass doors.

After several efforts, one pane of glass was smashed. Police attempted to spray a Mace-like substance at the demonstrators, but the protestors used a fire hose to repel both the charging police and their irritant. One policeman was hit by a flying stapler, and he collapsed in a pool of water.

The effects of the blown-back irritant then were felt by police, reporters, faculty observers and onlookers, and the situation remained static for about 10 minutes. The crowd, which was being held back by a double line of riot-equipped policemen, continued to shout encouragement to those sitting-in and obscenities at the police.

Onlookers Declared Illegal

"It takes a lot of nerve to hold those clubs against unarmed people," one woman yelled.

"Power to the people," the crowd chanted.

The onlookers and most of the press were then declared an unlawful assembly by Anderson, and the officers began to push them back in earnest. They stopped after the crowd had been moved back some 30 yards and contained behind a pair of locked glass doors. A hospital employee among the demonstrators produced a key, and unlocked the doors. An angry sergeant relocked them amidst a barrage of angry curses.

Police then repeatedly assaulted the barricaded doors, but were repelled three times by the use of

the fire hose and assorted missiles, including telephones.

In desperation, police loosened one door with what appeared to be a crowbar and a pair of bolt-cutters, and, at 6:30 p.m., using a rope, succeeded in pulling the twisted door out of the way.

"Let's Get 'Em"

As the door was pulled back with a rope, a police officer hollered "Let's get 'em," and the police eagerly vaulted over the barricade. At the same time, demonstrators opened a door at the other end of the corridor, where only ten policemen were stationed.

The officers were temporarily overwhelmed by the escaping protestors, and several policemen were beaten to the ground by demonstrators armed with clubs. One officer suffered an apparent broken shoulder of a result of a beating.

Other demonstrators left the offices through the windows—several of which were smashed—and shimmed to the ground on another fire hose. No one who escaped by this method was arrested.

At least one who was injured during the melee was later arrested as she was obtaining medical assistance at the Palo Alto Clinic.

One photographer on the scene estimated that it took police no more than 30 seconds to secure the entire occupied corridor. Several of the demonstrators were penned in and beaten by police. Injured police and demonstrators were treated on the scene

and in the emergency room by hospital personnel who were standing by.

As the corridor was being secured, the escaping demonstrators and others threw rocks at police vehicles. No one was reported injured in those incidents.

This is a special issue of the Daily. Because of Easter, no Monday issue will be printed. The Daily will resume its regular printing schedule Tuesday.

Page 2

The Stanford Daily

April 11

Reason Lost In Pace Of Events

By Felicity Barringer and Dan Bernstein

News Analysis

A sit-in, which, ironically, was not originally planned as a sit-in, developed Friday into one of the bloodier riots in Stanford history.

Throughout the 30-hour occupation of Administrative Offices at the Medical Center, and the intensive negotiating sessions that accompanied it, a few facts stand out.

—There was a crucial period early Friday afternoon which a combination of skillful negotiating and good timing might have resulted in a peaceful conclusion to the occupation.

—Once this chance had been forfeited by a combination of hasty decisions and intransigence on both

sides, the only alternative remaining was a bloody confrontation.

The occupation began almost by accident, as some 50 people left a noon rally for fired worker Sam Bridges and for Jose Aguilar, a professor who had not been granted tenure, and went to what they understood was a scheduled 1:00 p.m. meeting with Dr. Thomas Gonda, Associate Dean of the Medical Center.

Finding Gonda absent, the group decided to sit down in the foyer of his offices and wait for his return. Hours later, when Medical Center officials finally contacted Gonda, the demonstrators were still waiting before his offices. Gonda then met with members of the Black United Front (BUF), which was leading the group, and told them at that time that Bridges would not be rehired immediately.

The demonstrators then decided to stay until Bridges was rehired.

Groups represented in the continuing negotiations were the BUF, the Black Advisory Committee (BAC), and the hospital administration. At issue were the seven BUF demands, which dealt with the rights of employees to criticize the hospital administration, to form unions, to have grievance rights and to have peers present at those grievance procedures. Other demands were for the BAC and the Alanzia Latina, a Chicano workers' rights group, to have the right to investigate claims of violation of the above rights, and that fired janitor Bridges be rehired.

Five of these demands were readily agreed upon, as the administration declared that these rights already

existed. This left the demand for the rehiring of Bridges as the one point of contention.

A key factor in Friday morning's discussions was the reversal by the BAC of the previous stand they had taken supporting Bridges' firing.

During these negotiations many members of the BAC said that they would resign their jobs if Bridges was not rehired.

Upon the completion of the negotiations, misunderstandings started to develop on all sides.

Administration officials left the session with the understanding that the occupation would not stop until Bridges was rehired. Apparently basing his decision on that assumption, and after consultation with Gonda, Wilson, Associate Provost Robert Rosenzweig, and others, Acting President William Miller sent a statement to the sit-in, saying that "there will be no conclusion on the composition of dates for the grievance procedure while the occupation of the hospital continues."

What Miller and other Administration officials were unaware of was the developing willingness of the BUF to leave the occupation if the grievance procedures for Bridges were started immediately.

In fact, the BUF, in a meeting with the BAC and some black hospital workers, after the last session with administration officials, had agreed to leave if the grievance procedures for Bridges were started immediately, compromising on their demand for immediate rehiring.

Events, however, were going too fast to be reversed, or even slowed by now. Immediately after the BUF-BAC caucus had agreed on this point, according to Cheatam, the message came from Miller, which, in effect, slapped the demonstrators in the face right after they had made a concession. And, at the same time as Miller's statement arrived, word came from surveillance forces for the demonstrators that police were massing, and preparing to come to the hospital and stop the occupation.

Once the demonstrators had ascertained this, there was no backing down. Although they had agreed with the BAC to change their stand on Bridges' rehiring, they had had no time to make a statement to this effect and to leave with their goals apparently achieved. To leave without making a statement, after hearing of the massing of police, would amount to backing down under fire—something they would not do. Instead, they erected barricades to defend themselves, and asked all who did not want to remain inside to leave.

At the same time, having called the police, and having no knowledge of the turn of events in the negotiations, Administration officials could not recall the police. The stage for the confrontation was set, and the outcome inevitable.

Administration officials defend the timing of the police action stating that they wanted to proceed while it was still light, after the adjacent clinics had been closed, and before visiting hours began, so that corridor traffic would be at a minimum.

Between the confusion of demands, negotiations, pressures and counter-pressures, at least one crucial element of compromise was lost in the shuffle. The BUF was willing to compromise, but the Administration did not know it when it took its irrevocable step and called police.

Provost Statement

Closing and occupying an area of a hospital is not an acceptable way to pursue a grievance or make a point. When that tactic is used, as it was for more than 30 hours at the Stanford Hospital, the question for the Administration to answer is how to end the occupation with the least possible danger to patient-care services and the least possible risk to patients.

So long as there was a reasonable chance that Dr. Wilson and Dr. Gonda might persuade the people involved to leave voluntarily, I was prepared to refrain from asking for police assistance. However, disruption of hospital functions could not be allowed to continue for long, and when it became clear this afternoon that further discussion would not be productive, I asked the Palo Alto Police for assistance.

I regret, as much as anyone, that this disturbance had to be tolerated even for as long as it was. I hope it will be recognized, however, that what was at issue here was not simply expensive research equipment or valuable records, but sick people. Our first obligation was to protect their interests and each decision to act or not to act was taken with that in mind.

Before the sit-in began, the community was informed that the Hospital agreed with five of the six demands made on it. On one, the rehiring of Sam Bridges, the answer on Thursday morning was that grievance procedures are available to him if he wishes to use them. That answer still stands. If Mr. Bridges wants to file a grievance, he can be assured of a full and fair airing of the facts of his case.

William F. Miller

Page 4 The Stanford Daily April 11, 1971

BRIDGES' CASE

By Bob Litterman

Sam Bridges' firing and the subsequent negotiations concerning his case have been shrouded by misunderstanding. Bridges was first hired as a janitor for the hospital February 22. During his first month on the job, several complaints were made to his supervisor to the effect that Bridges was not doing his job.

Because the hospital was concerned about Bridges' feeling discriminated against, he was asked to attend a meeting with his supervisor, the hospital minority relations counselor Shirlee Parish, and the Assistant Chief of Engineering Warren Thorpe. At that meeting, Bridges told Parish that he had not asked for her help and did not need it.

More Complaints

After that meeting, Bridges had additional complaints made against him which included "having words" with another employee and a security guard. The security guard told his sergeant who called Thorpe to report the incident. Thorpe is alleged to have told the sergeant that he didn't need to worry because Bridges would soon be fired.

One week later, on March 16, Thorpe gave Bridges two weeks notice that he would be fired. Thorpe also told Bridges that grievance procedures were available, but Bridges later told the BAC that he was unclear what the procedures were and whether they applied to him since he was in his first six months of employment.

The next step Bridges took was to ask the help of the Black Students Union, the Black Worker's Caucus and the Black Liberation Front, a revolutionary group based in Redwood City. These groups formed the Black United Front (BUF) and began circulating a leaflet charging that Bridges had been discriminated against.

When he heard of this leaflet, Cheatham, a member of the Black Advisory Committee (BAC) initiated an investigation into the case. As a result of an initial hearing with Parish, Thorpe and Bridges supervisor the BAC issued a statement that stated in part:

"Mr. Bridges was terminated because he was not doing the job he was hired to do, and therefore putting an added burden on his co-workers."

BUF Rally

Last Tuesday the BUF held a rally in Bridges behalf at which time they presented a list of six demands including the reinstatement of Bridges to Dr. Thomas Gonda, Director of the hospital. At that time, the BUF was led to believe that Gonda would personally give them a response 48 hours later, Thursday at 1 p.m.

Wednesday, Gonda responded with a list of written responses to the six demands. He basically agreed to five of the six demands.

The BUF scheduled a press conference Thursday morning with MECHA and Alianza Latina, a Chicano hospital workers group, to discuss Bridges' case and that of Dr. Jose Aguilar, a Chicano doctor denied tenure to the medical school faculty.

After that press conference, the two groups held a rally and shortly after 1 p.m. marched into the hospital to hear Gonda's reply to the demands.

When the group which numbered close to 100 got to Gonda's office, they were met by deputy director Frank Vitale who passed out Gonda's written response and told the group that he did not know where Gonda was. Vitale said he did not think Gonda knew he was expected to appear in person.

The BUF decided to sit down in the corridor outside Gonda's office and wait for him.

Facts Left Unmentioned

The BUF met with the BAC that afternoon at which time Bridges argued that it could not have

reviewed the case since he had never appeared before it. The BAC announced that "All the facts . . . have not been presented." A hearing was scheduled for 8 a.m. Friday morning.

At the Friday morning meeting, several new facts were presented to the BAC. Among these were:

1. Bridges claimed he was not adequately informed of his job duties. His supervisor said he had not informed Bridges of his duties, but had introduced him to the foreman. The foreman said he had introduced Bridges to a fellow worker whom he assumed had described Bridges duties to him. Bridges was never given a job description form.

2. The employee who had had the run-in with Bridges described it as "not that serious."

3. One worker who was supposed to have seen Bridges asleep during his working hours said he had not actually seen Bridges asleep, but had heard of it.

On the basis of the testimony at this meeting, the BAC reversed its earlier decision and recommended that Bridges be immediately rehired.

The BAC immediately thereafter met with Gonda to inform him of its recommendations. Gonda decided that Bridges would have to go through the formal grievance procedures and he could not rehire Bridges immediately on his own authority.

As negotiations continued the BUF asked that the first three of four steps in the grievance procedures be bypassed, and that they go directly to step four, the review by Gonda himself.

At this point Gonda ruled that he could not handle this procedure himself and that some other impartial person be appointed. The BUF agreed upon Hank Oregan, and Gonda went to get approval of this procedure from John L. Wilson, dean of the medical center, and William Miller, acting President of the University.

End In Sight

After Gonda left, the BUF met with black hospital workers and decided to end the sit-in as soon as the grievance procedures were started according to the plan.

Soon after, however, the BUF received a statement from Miller saying that:

"I have Gonda's recommendations under consideration. However, we agree there will be no conclusion on the composition or dates for the Grievance Procedure while the occupation of the Hospital continues."

Soon after this statement arrived the BUF heard reports that police were massing. They then barricaded the doors to the corridor and there were no further negotiations.

BSU HITS 'RACISM'

By Dave Spector

The Black Students Union blasted the "racism" of the police action at the Medical Center in the arrest of ex-BSU Chairman Leo Bazde and the "brutal tactics employed by Stanford University against peace-

ful demonstrators" in a press conference Saturday afternoon.

BSU Co-chairman Mike Dawson stated, "Last year and earlier this year in massive student demonstrations by mostly white youths, there was not this type of police action in response . . . that black people were involved in this protest in large numbers was reason police action so heavy."

Because "the University has bargained in bad faith in enlisting the support of the Santa Clara police to disrupt our peaceful demonstration," the Black United Front demands were reiterated.

All, except the rehiring of Sam Bridges and amnesty, were agreed to by Dr. Thomas Gonda, director of the Medical Center, Friday morning.

The BSU statement affirmed "we cannot allow business to be carried out as usual at Stanford University until all demands are met" because "of the brutal tactics employed by Stanford University against peaceful demonstrators."

BAC, AL STATEMENTS

We, the members of the Black Advisory Committee, are appalled at the violence perpetuated by the police on a non-violent assembly. We are also appalled at the idea that the Acting President of the University would find it necessary to order police into a patient area, especially after the hospital Director stated that there would be no police action upon the occupants of the administrative suite.

We are holding a closed meeting for black employees at 9:30 a.m. Monday morning in room M104 in the Medical School, then adjourn and go to a mass rally at 10:30 a.m. Monday morning at the Medical School lawn off Campus Drive.

Black Advisory Committee

The Alianza Latina supports 100 percent the final finding of the Black Advisory Committee. That is, that Sam Bridges was unjustly terminated and that he be reinstated with pay retroactive to day of discharge.

However this issue has now been transcended by the vicious and totally unwarranted police action on a peaceful assembly of employees and friends.

This assault on black, brown, and white individuals has tragically pinpointed Stanford University's attitude toward minority employees. Provost Miller's decision to use University tactics (refusing to negotiate and resorting to police violence) on employees is a striking (no pun intended) example of his arrogance.

This violation of the workers' basic right to peacefully protest an unjust administrative act should be the concern of all workers.

There will be a meeting of all Latin employees Monday morning at 9:30 a.m. in room M106.

Alianza Latina

Exhibit E

February 10, 1970

THE STANFORD DAILY

Editorial:

POLITICS AND PHOTOS

The news media today is caught in a pair of scissors. While protest groups defensively resist full news coverage, police subpoena photographs and film to help prosecute demonstrators. Caught between two blades in a political argument, news gathering ability is being cut to shreds.

At Stanford, Daily photographers have been excluded from new Moratorium and SDS meetings. We recognize and regret the objections raised by the two groups—that newspaper pictures have been used to convict demonstrators. But we resent these attempts to interfere with coverage of lawful, open community meetings on campus.

The Daily cannot pursue news gathering in a vacuum, ignoring the consequences of what it prints. Neither can we brush aside our responsibility to print and picture the news fairly and fully. Responding to both journalistic responsibilities and the realities of government subpoenas, the Daily staff has voted to accept the following policy for reporting meetings and demonstrations.

1) Photographers will be assigned to newsworthy events, and they will remain until explicitly excluded. If they or their equipment are harmed, the Daily will

press charges through campus and community judicial bodies. However, the Daily will not withhold news coverage to force access for its photographers.

2) The Daily will print newsworthy photographs regardless of their potential for incrimination. This is essential to full coverage of events.

3) Negatives which may be used to convict protestors will be destroyed. We feel that a line can and should be drawn at this point between journalistic responsibility and cooperation with government authorities in protests that are often directed against the government. Once a story has been printed, pictures taken with it are rarely used again. However, negatives which never appear in the paper may be used to convict demonstrators.

The Daily feels no obligation to help in the prosecution of students for crimes related to political activity. Our purpose is to gather information for our readers, not for police files.

We advise both the police and the protest movement to consider again what they sacrifice when they tamper with the press' ability to present the news. The press must act as much more than a political weapon or shield.

In this spirit of responsibility, realism and independent, we present our policy.

Exhibit F

THE STANFORD DAILY

Editorials:

Yesterday's search of the Daily office for photographic evidence relating to last Friday's violent sit-in was one more in a growing list of examples of the intimidation and harrasment [sic] being inflicted on the news media by governmental agencies. It is the function of the press to inform as many people as possible of decisions and events affecting their lives. The facts imparted by the press give these people a chance to affect these decisions and events, by arming them with knowledge. If this function is impaired in any way, the ability of these people to control their own lives is jeopardized. [sic] In light of this, it is extremely difficult, if not impossible for any news organization to perform its function in a democratic society if it is constantly under the threat of a governmental subpoena or a government-sanctioned search of its premises.

A search such as yesterday's is particularly devastating to a newspaper's ability to keep its own confidential files. Although no evidence relating to Friday's demonstration was found yesterday, all photographic and editorial files were examined. Since this search was made, the possibility that subpoenas might be issued at a later date for material officers saw during this fishing expedition does not seem remote.

It has been the Daily's standing policy to destroy all potentially incriminating unpublished photographic

material. That policy, while regrettable, is a necessity. It hampers our ability to keep files which may be of future informational use. However, more important even than keeping these files is the necessity for a news organization to keep itself from becoming a filing service for evidence to be used in civil or criminal courts. Until such time as it becomes evident that the threat of actions such as yesterday's no longer exists, we will stand by this policy.

We also intend to examine all possible legal roads that may lead to the prevention of acts such as yesterday's search. In a truly free society, the news media and the government must remain as far separated from each other as possible. The use of searches, subpoenas, and all other forms of governmental harassment [sic] obviously have a chilling effect on the freedom of the media to exercise the rights guaranteed them by the First Amendment. If the government of this country, both on the national and local level, continues to employ intimidating tactics, it must be challenged at every step of the way. This is the only possible answer to actions such as yesterday's, if we are to have a truly free press.

Monday morning quarterbacking, of a football game or a campus disruption, has little meaning in terms of the actual events being examined. Its usefulness is largely limited to suggesting guidelines for action in possible future occurrences. In this light, we offer our reactions to the events of last Friday.

We cannot help but think that the decision to call the police to the scene of the sit-in was disastrous.

When the police were called, negotiations were proceeding satisfactorily, although the administration was unaware of the fact. While the administration has defended its actions on the grounds that patients were being disturbed, it is evident that not all doctors with patients concerned were consulted. Furthermore, the demonstrators were neither clearly nor specifically informed how their presence endangered patient welfare. Finally, the nature of the demonstrators made a violent response to police presence very likely, though not inevitable.

The case of the fired custodian, Sam Bridges, is almost as complex as the sit-in his firing precipitated. We are studying the charges made against him and will discuss the validity of those charges in a later editorial.

Thus, the administration decision to wash its hands of the sit-in and give final authority in the matter to the police was both unwise and unwarranted. The events of Friday clearly demonstrate that the circle from which that decision emerged is too small and too closed. More input about the status of the negotiations, the welfare of the patients, or the nature of the demonstrators could have forestalled the tragedy.

We are less certain in our analysis of the actions and tactics of the demonstrators. Our editorial board is evenly divided as to the question of their resistance. Half of the board feels that the building of a barricade and the subsequent fighting with the police was unwarranted, that a nonviolent reaction to the police

presence was in order. The other half understands the demonstrators' actions, holding that their response to the arrival of the police was inevitable.

Most of us agree that the destruction of the offices was unwarranted. The damaging of furniture and the scattering of files has no rational defense in our minds.

If we are to learn anything from the events of last Friday, it is that decisions to use police force may have unexpected consequences. Both Provost Miller and President Lyman had best anticipate them in the future.

In the United States District Court
for the Northern District of California

[Title Omitted in Printing]

AFFIDAVIT

State of New York
County of New York ss

GORDON MANNING, being duly sworn, deposes and says:

1. I am Senior Vice President and Director of News for CBS News, a division of Columbia Broadcasting System, Inc. Before joining CBS news, I was *Newsweek's* Senior Editor for five years and was named Executive Editor in 1961. I began my professional career with United Press in Boston and worked in various reportorial and editorial positions

with United Press. I served in the United States Navy during World War II. After the war, I became a staff writer for Collier's Magazine and was its Managing Editor from 1950 to 1956.

2. My work for CBS News consists of general responsibility for all regularly-scheduled CBS Television Network news broadcasts, on both radio and television, as well as for urgent Special Reports, the coverage of special events, newsfilm syndication and the administration and direction of all CBS News staffs and bureaus, the correspondents and other news and administrative personnel, foreign and domestic.

3. Quite obviously, the success of these efforts depends on the ability of hundreds of employees performing dozens of functions to perform these functions free from inhibiting or disruptive influences. Such influences can take many forms. The use or misuse of the subpoena power by agencies of the government to obtain material other than that which is actually published or broadcast has, of course, been the "inhibiting influence" with which we have recently and publicly been concerned in connection with CBS' broadcast of "The Selling of the Pentagon". The specific objection to this use of broadcasters' "outtake" material was the threat of governmental second-guessing of journalistic decisions. That case, with which we have quite naturally been identified so closely, is in one sense merely the tip of the iceberg.

4. The increasing use of the subpoena power by governmental agencies puts broadcasters and other journalists in the position of being *de facto* investiga-

tive arms of the government. The inevitable effects of this are that news sources dry up, reporters may be tempted to be timid in choosing and preparing their reports through fear of themselves being subpoenaed, and the temptation arises to destroy outtake material which might otherwise be useful for follow-up reports or historical preservation. All of these effects are significantly inimical to the functioning of a free press.

5. All of this is relevant to the case at hand because the use of a search warrant in the manner used by the Palo Alto police in connection with its search of the offices of *The Stanford Daily* embodies all of the evils of misuse of the subpoena power as well as enough extra dangers to make it an especially alarming intrusion into the already threatened freedom of the press. To allow this kind of free-wheeling search is to invite more searches, since a working newsroom contains an abundance of information, much of which would be argued by investigators to be useful whether or not material obtained in this way could be used as evidence. The temptations would clearly be strong, and the acting on these temptations would be disastrous. Not only would the news gathering and reporting functions be inhibited in an exaggerated but a similar way to which the subpoena power inhibits, but also the very ability of a news organization to operate would be threatened. A search warrant presumes that material must be sifted before the needed material is located. I can imagine the workings of a newsroom being brought to a complete halt while voluminous and as yet unorganized information is "searched". The result would be intolerable, especially to a profession which de-

pends on the intelligent processing of information in the shortest possible time. That such a search may later be held illegal at best only partially can undo the damage.

6. In sum I strongly believe that only strong disavowal of such techniques by governmental agencies can free the press from being affected by influences which have no place in the practice of journalism. The use of a search warrant to obtain unpublished information from a journalist appears to me to be an especially serious threat to the maintenance of a free press, one which is intolerable in an era when journalistic freedom is at the same time so important and so fragile.

/s/ Gordon Manning
Gordon Manning

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted in Printing]

AFFIDAVIT

State of New York
County of New York—ss.

GENE ROBERTS, being duly sworn, deposes and says:

1. I am National News Editor of *The New York Times*, a position I have held for three years. Prior

to that time, I was Chief Correspondent for *The Times* in Vietnam for one year and in the South for three years. Before joining *The Times*, I was an editor and reporter for the *Detroit Free Press*, *The Norfolk Virginian* and *The Raleigh (North Carolina) News and Observer*. I have been a full time journalist for the last fifteen years and have had wide experience as a working reporter and an editor.

2. I submit this affidavit in support of the motion of the plaintiffs for summary judgment that the search of the *Stanford Daily* on April 12, 1971 be declared illegal and unconstitutional. As a journalist, I am deeply concerned with maintaining the freedom and integrity of our nation's press. A police search of a newspaper office, even with a warrant, constitutes a clear and present threat to that integrity and freedom. If the search which was conducted in this case is permitted to stand, it is clear to me that no newspaper office in the country will be safe from official intrusion.

3. In the case of the *United States v. Earl Caldwell*, now on appeal by the United States government in the United States Supreme Court, the Ninth Circuit Court of Appeals held that a governmental investigative body must show a compelling and overriding national or state interest before requiring disclosure of a reporter's confidences. However, far more dangerous to a free press, and far more likely to result in the closing off of important news sources, I believe, is an unrestricted search of a newspaper's offices and the rifling of its files of the raw material that makes up the newspaper's published contents.

4. A government search of a newspaper office for its unpublished photographs, and other material, is certain to have a profoundly adverse impact on the newspaper's ability to gather the news. First, its reporters and photographers would earn the reputation of unwilling police agents, and their access to much sensitive information would be severely restricted. The *Caldwell* case, and its companion case *In the Matter of Paul Pappas*, each involve the threatened loss of a reporter's access to the Black Panther party. The other companion case, *Branzburg v. Hayes*, involves the reporter's sources of information with respect to illicit drug traffic. In each of these cases, the reporter swore that upon public divulgence of his confidential informants he would lose his sources for reporting obviously newsworthy activities.

5. The potential loss of sources because of their forced disclosure is an unfortunate reality with which all journalists live. This was well illustrated when Anthony Ripley, a *Times* reporter who had been reporting on the activities of radical groups, was summoned in 1969 to appear before a Congressional investigating committee. Ripley appeared before the committee and, although he testified only as to matters which had appeared in print, his effectiveness as a reporter on radical activities was effectively destroyed. Meetings to which he had previously had access were no longer open to him or, indeed, to other *Times* reporters, and other sources of information quickly dried up. In fact, the entire press suffered as a result of Ripley's forced appearance and much important information was forever lost to the public.

6. If a mere appearance before a government body can have such a destructive effect on a reporter's ability to gather the news, it is clear to me that a search of a newspaper office—during which everything in that office is open to official scrutiny—could be devastating. The parameters of the impact of such a search are hard to define only because in my fifteen years as a reporter and editor I have never before heard of a search of a newspaper office being permitted in this country.

7. The files of *The New York Times* contain many photographs and much information obtained in confidence, or with some restrictions, from a variety of persons in whom, and groups in which, government officials are interested. In the event our offices were subjected to a police search I am certain that many of these important news sources would be forever closed to our reporters and photographers, and thus to the public.

8. Of equal concern to me as an editor is the potential impact of newspaper office searches on the day to day work of reporters and photographers. If reporters and photographers believe that the information they gather will be available to government officials, they will not be eager to get the sensitive story, or to track down the individual who will supply the critical information. And I, as an editor, will consider carefully before publishing facts, or a photograph, which might imply that there is more than appears.

9. All reporters have taken written notes of factual disclosures received in confidence. If such notes are

subject to police seizure, it is likely the reporters will stop bringing them back to their offices and using them as aids in preparing their stories. I am obviously concerned for the quality and character of journalism if reporters refrain from taking notes or taping interviews for fear that this raw stuff might be easily available to government officials through the device of a search warrant.

10. A newspaper is built on millions of words and thousands of photographs. It cannot function as it should if these words and photographs can easily be examined and confiscated by government agencies.

A dangerous precedent has been set by those who authorized and conducted the search of the offices of the *Stanford Daily*. Unless this Court holds firmly and unequivocally that this search was constitutionally impermissible, no newspaper office in the country will be safe from similar police action.

The danger is real and the threat to press freedom and independence is something with which this nation's press and public cannot easily live.

/s/ Gene Roberts
Gene Roberts

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted in Printing]

AFFIDAVIT OF DON TOLLEFSON

DON TOLLEFSON, being duly sworn, deposes and says:

1. I am entering my Senior year at Stanford University, and I am a Communications Major. I have been working on the *Stanford Daily* since September, 1969, and I am presently the Editor-in-Chief. My job requires over 40 hours per week.

2. Around 5:40 p.m. on April 12, 1971, after picking up news releases from the University News Service, I returned to the *Daily* offices and noticed a Stanford Police car parked in front of the Storke Student Publications Building. When I entered the main door of the building I noticed two uniformed police officers standing in the doorway of the *Daily* editorial offices, discussing something with a couple of *Daily* reporters and two men in suits. As I entered the editorial offices, one of the men in suits (a Palo Alto Police Officer) asked another *Daily* reporter who I was. When he was told that I was the News Editor, (the position I held at the time) a search warrant was given to me. I glanced at it and when asked where the Editor was, I said that I did not know, but that I hoped she would arrive soon.

3. I then went into the News Office in order to phone some other editors. I was unable to contact anyone and the police officers shortly said that they had

to begin their search. They asked me if I would cooperate. I did not answer, and they headed towards the darkroom while I was still on the phone. During the next 15 or so minutes I went back and forth between the photo offices and the editorial offices, still trying to contact other members of our editorial board. During this period I observed the officers in the photo office for a number of minutes. All of our file cabinets and wastebaskets were gone through. I also observed one plainclothes officer making a search of the *Quad* (yearbook) photo files and carefully examining their negatives. I remember at least one person mentioning the fact that they were searching the *Quad* files in a voice loud enough for the officers to hear.

4. Shortly after observing the foregoing, I received a call from KPIX News regarding some of the demands which had been issued at the Medical Center earlier in the day and I went into the Business Manager's office to use the phone there because the rest of the offices were quite hectic. Because people were running in and out of all the offices, I shut and locked both doors going into the business office. While I was talking on the phone, some people began to knock on the door, and because I was in an inner office and thus could not see them, I yelled for them to wait, but the knocking continued. I then got up and saw that it was the police, accompanied by a number of reporters and other people who had walked across the hallway from the photo offices. When I first saw them, the uniformed Palo Alto officer was attempting to open the window adjoining the door. I opened the door and let them in.

While they were in the business office, the uniformed officer went through a stack of that day's edition of the paper, unfolded them, and shook them out.

5. When I hung the phone up, I left the business office and went back to the editorial office where I saw a uniformed officer sitting at the Editor's desk. I observed him while he searched through the drawers of that and the other desks in the office which at the time belonged to Fred Mann, Ed Kohn, and myself. In the next few minutes I saw him sift through a number of items of correspondence in and on the desks and I saw him look at least one letter for a long enough period of time to have read it. Shortly after this, the police left.

6. As the time of the search, my desk contained notes gathered during the course of my work which typically includes information given to me in confidence. Confidential information and sources are very important in terms of allowing me to function effectively as a reporter. If people felt that information given me in confidence might possibly be available to the police, many news sources might refuse to give me any further information and this would greatly hamper my ability to report the news completely.

7. To my knowledge no staff member of the *Daily* was in no way involved in the planning or participation in the Medical Center sit-in or the events arising out of it, no *Daily* reporter or photographer had any more interest in the proceedings than as a newsworthy event.

8. Prior to the search, I have observed several instances of harassment of photographers in which the *Daily's* policy helped to extricate photographers from difficult situations involving confrontations with angry or suspicious demonstrators. On the night of February 8, 1971, I was covering disturbances which followed a meeting at Dinkelspiel Auditorium. In the hour following the demonstration, approximately 60 windows were broken on campus. While following the crowd around I was aware of a number of confrontations which occurred between *Daily* photographers and people in the crowd. I was with our photo editor, Lee Greathouse, when a young man told him that "the people" didn't want any pictures. Greathouse discussed the matter briefly with him and explained that he was from the *Daily*, and that our policy was to cover the news, not to turn photos over to the police. This pacified the man to an extent, and he didn't take as harsh an attitude as I'm sure he would have had we not explained our policy. He still was not very happy about our taking pictures, but he was unwilling to use force to prevent us, as he had been at first. On that evening and subsequently during disturbances, identification as a *Daily* photographer was usually enough to admit our photographers to meetings and keep them from being bothered. In my opinion, without this protection, we would have had no more chance than other outside newspapers to cover the events on campus.

9. Because of the search, I now realize that the police could have access to our photo files. Unfortu-

nately, I think demonstrators realize this too, and I know that the fear that the authorities may use our photos has hampered our ability to cover the news. An incident that I observed April 21, 1972 illustrates this. On that date I was covering as a *Daily* reporter, a student strike at Stanford which was part of a national student strike called to protest the bombing of North Vietnam. As part of my coverage, I attended a 10:00 a.m. Biology class in Stanford's Dinkelspiel Auditorium, which had been picked as a strike target. A *Daily* photographer, Harvey Rogoff, was with me in the auditorium, also covering the strike. A number of demonstrators blocked the doors to Dinkelspiel and numerous scuffles broke out between some of the demonstrators and a number of students who were attempting to enter the class. Twenty-five or thirty students did make it into the class, but a member of Venceremos, a local revolutionary organization, repeatedly interrupted the professor, despite a vote of the students which was overwhelmingly in favor of the professor continuing with his scheduled instruction. A number of students began to heckle the Venceremos member and finally he went into the audience and slapped a student quite vigorously. Rogoff took a picture of the incident and then began walking out into the lobby. There, in the doorways, scuffling and arguing was still going on between demonstrators and students who wanted to enter the auditorium. As Rogoff was leaving, another member of Venceremos, who had entered the auditorium through a rear entrance a few minutes previously, charged up the stairs after him.

He confronted Rogoff in the lobby, grabbed him and demanded that Rogoff give him the film. The demonstrator became very vocally abusive and when it looked as if he might physically assault Rogoff, Rogoff told him that the pictures would not be printed in the *Daily*. But despite this assurance, the demonstrator continued to harass Rogoff and indicated that he through [sic] that Rogoff's potentially incriminating pictures might be available to the authorities. Rogoff still refused to hand the film over to the demonstrator and just when it seemed as if he was again on the verge of physically assaulting Rogoff, a disturbance flared up in the doorway again and the demonstrator joined some other demonstrators who were still trying to prevent students from entering the auditorium.

10. Photos serve not only an important esthetic function in a newspaper, but also serve a valuable news function as well. Pictures of civil disobedience and disturbances in particular add substantially to our political coverage, we could not serve our function as an important source of local news if we could not continue to take the type of photos that we do now.

11. Although in the absence of the service of a subpoena the *Daily* considers itself free to dispose of or destroy any of its property, including unpublished materials or photographic stills, the policy of the *Daily* is not to destroy any material covered by a judicially authorized subpoena and, to my knowledge, no such destruction has ever occurred. During my three years on the *Daily*, it has been the policy of the *Daily* to

choose photographs for publication solely on the basis of newsworthiness and without regard to whether the photographs might be incriminating to the persons depicted therein.

Executed this 18th day of June, 1972.

/s/ Don Tollefson
Don Tollefson

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

AFFIDAVIT OF STEVEN G. UNGAR

The State of California
County of San Francisco—ss.

Steven G. Ungar, being duly sworn, deposes and says:

I am a member of the staff of the Stanford Daily. I was present when Palo Alto police officers searched the *Daily* offices on April 12, 1971. The following is an account of the incidents I observed, as best I can remember.

I was in the *Daily* office from about 5:20 until 7:20 the evening of April 12, 1971. I came to the office to deliver a camera to Bill Cooke, the *Daily* head photographer. I had borrowed the camera the night before in order to cover a rally at the Medical School that

was held the morning of the 12th. The camera was a Nikkormat with a 135 mm. lens.

I called the *Daily* office at 5:15 and was told I could bring the camera to the office and it would be locked in the darkroom by Don Tollefson, the news editor. When I arrived at the office moments later I was told that Tollefson had stepped out and would return shortly. After waiting for about fifteen minutes I decided to leave and return later in the evening. As I approached the front door of the *Daily* office I noticed several men emerging from a white car that had parked across the street. Some of the men were dressed in police uniforms, which led me to believe that the car was an unmarked police car. The men crossed the street and approached the *Daily* office.

When they entered the lobby they stopped to examine a directory sign that is posted near the door. One of the men said, "Do you know where you're going?" and another answered, "No, I don't." At this point I stepped up to the group and asked if I could be of assistance.

One of the non-uniformed men asked me if I was "the man in charge." I told him that I wasn't, but that I might be able to help him anyway. He asked to see "the man in charge." I told him to follow me, and entered the *Daily* news office. The group did not enter the office, but waited outside the door.

I crossed the room to the editor's desk where Ed Kohn, the *Daily's* political reporter, was seated. I asked him if Felicity Barringer, the editor, were pres-

ent. He said she was not. I told him that we "had some visitors," and that he might want to meet them. He walked across the room to the door where the group was waiting. I followed at a short distance. When I got to the door I heard the non-uniformed man mention the word "warrant". He tried to present a paper to Kohn, but Kohn refused to take it, and said something to the effect that it was no use giving it to him as he was not in charge here. The man replied that it didn't matter, as long as he worked there.

By this time a small crowd had developed around the door, including several reporters, workers from the ASSU type shop, and one or two visitors who had come to the office to transact business. After a short delay, in which it was determined that Barringer could not be immediately produced, the officers announced that they would wait only a limited time before commencing a search of the *Daily* office.

At this point Ralph Kostant, a *Daily* reporter, made a picture-taking motion in my direction. I moved back into the office, away from the door, and loaded the camera that I had been wearing around my neck.

I proceeded to take pictures of the group around the door of the news office. About five minutes later the officers announced that they would begin searching the office. Kohn told them to go right ahead, pointed out the photo lab, the business office, the news office, the editorial office, and the type shop, and told them to start wherever they wanted. Four of the men pro-

ceeded to the photo lab. Another, a Stanford Police officer, remained in the lobby.

I followed the four men into the photo lab. Two of them began to examine contact sheets and prints in the darkroom. The other two began to search through desks on either side of the photo lab. I entered the darkroom and took several pictures of the two men rummaging through a waste box. I was called into the photo lab where one of the men was searching a filing cabinet. This man (the non-uniformed man who had first addressed me, and who had produced the search warrant) continued to search this cabinet for about 45 minutes. He would remove a glassine envelope of negatives, slide a strip of negative out of the envelope, hold the strip up to the light, and then re-insert it and proceed to the next envelope. I took about 20 pictures of this activity.

After about 10 minutes I left the photo lab and went back into the news office. There were no officers in the news office, and it was very quiet. I returned to the lobby, where I spoke briefly with the Stanford police officer. He informed me that he was present because it was customary for officers to accompany officers from another jurisdiction when the other officers have entered the jurisdiction to execute a court order or to make an arrest. I pointed out that he is not a peace officer, and that Stanford is in the jurisdiction of the Santa Clara County Sheriff, so Sheriff's deputies should have been present. He told me that if an arrest were to be made, they probably would have been summoned.

I re-entered the photo lab. The search was continuing, as before. Paul Grushkin, a *Daily* reporter and a former news editor, was present, and he urged me to take more pictures of the search. I continued to take pictures of the men searching the files in the news office.

A short time later, Felicity Barringer appeared. She spoke to several of the men, and watched as the search proceeded. Many people had gathered in the *Daily* office, including a man who later identified himself to me as Jim Wolpman, an attorney, several people who identified themselves as reporters from radio station KZSU, and another photographer, who did not identify himself to me. Bob Byers, of the Stanford University News Service, also appeared.

At approximately 6:10, all but one of the officers left the photo lab and proceeded to search the rest of the office. I went with one of the uniformed Palo Alto officers into the *Daily* business office. He gave only cursory examination to the files and desks in the business office. Most of these files and desks are kept locked, as they contain important papers and documents relating to the business aspects of the newspaper.

The officer entered the news office, opened and examined the contents of the desk of Fred Mann, the managing editor, and of Felicity Barringer, the editor. I took several pictures of the officer examining the contents of Barringer's desk. While examining the desk he stopped several times to look at documents

that were in the desk, and he appeared to be reading these documents.

The officer proceeded to the sports desk, but made only cursory examination of the contents. He tried the door to the printing room, found it locked, and proceeded to the mailboxes near the door to the news office. He examined the contents of the boxes. He entered the editorial office, and proceeded almost immediately into the ASSU type shop. He was informed that the type shop was not part of the *Stanford Daily*, and he immediately left.

I returned to the photo lab, where the search through the file cabinets was still in progress. A small crowd of perhaps ten people were present. I climbed to the top of a cabinet, and photographed the rest of the search from there. Lee Greathouse, the *Daily* photo editor, entered at about this time, and proceeded to take pictures.

After a few minutes, the officers concluded their search, and left the office. I followed them to their car and took a last picture as they were entering the car.

Dated: May 15, 1971

/s/ Steven G. Ungar
Steven G. Ungar

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

AFFIDAVIT OF STEVEN G. UNGAR

The State of California
County of San Francisco—ss.

Steven G. Ungar, being duly sworn, deposes and says:

I am a Ph.D. candidate in Electrical Engineering and I am twenty-six years old. I have been on the staff of the *Stanford Daily* since April, 1969. In January, 1971, I was asked to join the photography staff of the newspaper, an invitation which came after I took some pictures of scientific apparatus at the Stanford Artificial Intelligence Project. My primary purpose in that reporting was to convey, in words, the importance and meaning of the work being performed. However, it was obvious to me that the story would be worth much more with pictures.

This is generally true; some stories cannot be told without pictures. The murders of President Kennedy, of Lee Harvey Oswald, and of Robert Kennedy were all made more real, and more frightening, because an alert photographer happened to be on the scene. Edward White's walk in space, Neil Armstrong's first step on the moon, the famous view of the earth rising over the moon's disk, are all scenes with which we are familiar, because the printed word was supplemented by brilliant photography. Thus, the first question a news editor asks about a possible story

is "Can you get any good pix?" Some tabloids, such as the *Daily News* ("New York's Picture Newspaper") actually depend on photography for a good part of their copy.

The *Stanford Daily* while not a tabloid has always relied on photographs to help tell a story. *Daily* photographers, because of their unique status as students working among students, have often had access to a story that, for one reason or another, was denied to photographers from other newspapers.

As a specific example of this, I can cite my experience in covering the occupation of the Stanford Computation Center by radical students in February, 1971. The students who had occupied Pine Hall were reluctant to allow any photographers on the premises. By identifying myself as a *Daily* photographer, I was able to gain access to the building in order to take pictures from the roof when the Santa Clara County Deputies arrived. I could not have taken the photos had I not been a *Daily* photographer. Only one other newspaper photographer was on the roof of that building, and he was also from the *Daily*. We were the only photographers considered "legitimate" and "trustworthy" by the demonstrators (although we have repeatedly published pictures which were not particularly helpful to their cause).

As a *Daily* photographer, I have often been in the middle of some heated confrontations. On more than one occasion I have found myself in a no-man's land between a line of angry and scared demonstrators and a line of angry and scared police. When I cover

a demonstration, violent or non-violent, my press card, enclosed in a clear plastic case and pinned to my left breast, is my only protection, from both sides.

Since the search of the *Daily, Daily* photographers, including myself, have been threatened while covering campus demonstrations. My roommate, Joseph Berman (a *Daily* photographer also) was threatened and harassed while covering a small campus demonstration, the day after the search.

On the afternoon of June 29, 1971, I had occasion to be present in the lobby of the East Wing of Encina Hall when that lobby was being occupied by several dozen persons protesting the dismissal of five University employees for alleged misconduct at the time of the April 9 Stanford Hospital sit-in. I was present in the lobby as part of my function as a photographer for the Summer *Stanford Daily*. My press card was pinned to my left shirt pocket, and was clearly visible.

At approximately 4:58 p.m. a confrontation took place between Provost William Miller and one of the demonstrators. Provost Miller informed the demonstrators that they would have to leave the building at 5:00 p.m. or face arrest. I took several photographs of this discussion.

After I had taken many pictures, and as the 5:00 p.m. deadline approached, one of the demonstrators, a young woman dressed in a white lab coat, leaned over to me and asked me to stop taking pictures. I refused. She asked me why. I answered that I was

a member of the press, that it was my job to take pictures, and that I would continue to do so. I indicated Bob Litterman, who was standing behind me and to my left, told her that he was my editor, and that if she liked, she could talk to him about it—if he told me to stop taking pictures, I would stop.

About fifteen seconds later a man approached me from across the lobby. To my best recollection, the following conversation ensued:

Man: I saw you taking pictures of them. I was standing back there and I think you took pictures of me. I don't want my picture taken.

Me: Then don't stand there.

Man: You shouldn't be taking those pictures. I don't want my picture taken. Please stop taking pictures.

Me: No.

Man: I want you to give me your film.

Me: No.

Man: I want you to give me that film, and I want you to stop taking pictures.

Me: I'm not going to give you the film.

Man: Why are you taking pictures? Don't you know the pigs will use them. You're helping the Red Squad with their case against every one in this room.

Me: That's ridiculous. They (the demonstrators) can't be prosecuted for doing this.

Man: What do you mean they can't?

Me: They're not doing anything illegal. That's ridiculous. I work for the *Stanford Daily*. We don't give pictures to anyone. Every picture I take goes to

the office. No one else gets it. The only pictures they see are the ones in the paper. This is my editor (indicating Litterman). You can discuss it with him.

Man: I'll stop you from taking any more pictures.

Me: How?

Man: It's very easy (places hand lightly over lens).

Me: If you touch me I'll press charges or if you touch my camera I'll press charges. I'll have you up for assault.

Litterman: I'm the editor of the *Summer Daily*. Our policy is not to turn our pictures over to the police, and if you harm one of our photographers we are prepared to press charges. We won't allow you to censor us.

At this point a demonstrator approached us and stated that "The *Stanford Daily* is good, they burn the stuff."

Another demonstrator appeared and said that we had turned over photographs of the Hospital demonstration to the police. Litterman responded that we had turned over nothing. The demonstrator said that our office had been searched, and Litterman and I pointed out that the police in fact seized nothing, and that the *Daily* would never voluntarily give photographs to the police.

Although I was not harassed any further, and some of the demonstrators apologized, I am convinced that the fact of the search did not make taking photographs any easier. I am further convinced that it is only the belief on the part of campus demonstra-

tors that the police will not have access to *Daily* photographs that permits us to cover the news. It is also clear to me that the search by the police only makes it more difficult to convince demonstrators that the *Daily* is not, and will not become, an adjunct of any law enforcement agency.

/s/ Steven G. Ungar
Steven G. Ungar

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted in Printing]

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[Filed Jul 7, 1972]

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In the United States District Court
for the Northern District of California

[Title Omitted in Printing]

AFFIDAVIT OF CRAIG BROWN REGARDING
THE MOTION FOR SUMMARY JUDGMENT

I, CRAIG BROWN, being sworn, state:

1. I am a deputy district attorney for the County of Santa Clara, State of California, and one of the defendants in the above entitled action.

2. While employed in that capacity in October of 1969, I had occasion to have contact with representatives of the Stanford Daily. At that time, I was involved in the prosecution of Steven Kessler, Case No. 86/30419, in the Municipal Court for the Palo Alto-Mountain View Judicial District, County of Santa Clara, State of California. A Subpoena Duces Tecum had been served on the Stanford Daily for the production of any photographs, films, or negatives relating to the Steven Kessler prosecution. The Stanford Daily moved to quash the subpoena, and a hearing was held on October 23, 1969, at which Mr. Mark Weinberger, Editor of the Stanford Daily, testified. Mr. Kessler was being prosecuted for crimes arising out of demonstrations in May of 1969, in the area of the Stanford Research Institute in Palo Alto. The subpoena required the Stanford Daily to produce all photographs and negatives in its possession and control taken by or for the Stanford Daily in the area of the Stanford Research Institute on May 16 and May 19, 1969.

3. After viewing the contact sheets produced by Mr. Weinberger, I and my colleague, Alexander Singleton, were of the definite opinion that the contact sheets and/or the films from which they had been produced were incomplete and that a number of photographs, in our opinion those which should have been incriminating, had been deleted. The contact sheets produced by Mr. Weinberger were of absolutely no value to the prosecution except for already published photographs.

4. The testimony of Mr. Weinberger convinced my office that the Stanford Daily either would not or could not respond to a request or to a Subpoena Duces Tecum for the production of photographs, films, or negatives which might be incriminating. Mr. Weinberger had testified that he could name only two of four of his photographers who had taken the pictures on the days in question and that he could not state how many photographs were taken by these photographers. His testimony indicated that the Stanford Daily had little or no control over its photographers, over the film used by its photographers, or over the negatives and photographs which might be produced from that film, or submitted to the Stanford Daily by stringer photographers for possible publication. He testified that essentially there was no way he could determine the whereabouts of any particular picture or negative. He testified further that practically any person, whether or not he was a member of the Stanford Daily, could have access to the negative files and that, with regard to the negatives, photographs, and

contact sheets in question, the defendant in a related criminal case had been given full access to these materials with the permission of Mr. Weinberger. He testified that the Stanford Daily loses negatives "quite often" and that it often "mismarks" negatives. He explained that not all of the students working on the Stanford Daily are highly reliable.

5. Mr. Arnie Folkadahl had also been served with a Subpoena Duces Tecum for similar photographs, and the motion to quash apparently was made on his behalf also by the attorney for the Stanford Daily. Mr. Folkadahl produced a package of six strips of six negatives each, plus a lone seventh negative. Mr. Folkadahl identified himself as a free lance photographer who was "stringing for a local newspaper in the capacity of a news reporter." He testified that on the days in question he had taken close to 800 pictures. With regard to the pictures taken of the incidents in question, Mr. Folkadahl testified that he could not produce at least one roll of film because it had been stolen from the "darkroom at Stanford". Another group of pictures he considered dangerous to have around, so in the early part of August he mailed them to a certain individual in Tokyo who would not be back in the United States until the following August. A third set of negatives, he testified, were scattered throughout his belongings and he had not been able to locate them.

6. From the above-stated experience with the Stanford Daily and one of the photographers who apparently was working for the Stanford Daily, my office

was of the definite opinion that not only would the Stanford Daily strongly resist any Subpoena Duces Tecum but also that, if served with such a subpoena, the Stanford Daily would destroy or remove any incriminating photographs from its premises. This belief was strengthened by the fact that, some time prior to April, 1971, the Stanford Daily issued a policy statement indicating that it would not retain any potentially incriminating photographs, which policy became known to my office.

7. Between October, 1969, and April, 1971, there were many disruptions at Stanford University and in Palo Alto. All of these disruptions were investigated by the District Attorney's Office. Due to its known policy, no effort was made by law enforcement agencies to obtain photographic evidence from the Stanford Daily, and such evidence was usually obtainable from police agencies or it could be obtained in the usual cooperative and easy manner from other news media.

8. With regard to the incident at the Stanford University Hospital on April 9, 1971, the Stanford Daily had published many pictures of the hospital incident in a special edition on April 11, 1971. A copy of this edition was obtained by the Palo Alto Police and by the District Attorney's Office. The Palo Alto Police Department indicated that no police photographers were located at the east end of the hospital corridors where many felonious assaults upon police officers occurred, and that while most photographers and news reporters were located at the western end

of the corridor with the main police force, that some Stanford Daily photographers may have worked their way to the opposite end.

9. Any photographic evidence in the possession of the Stanford Daily relating to these assaults would have constituted evidence tending to show the commission of a felony. Prior experience in prosecuting cases arising out of demonstrations such as the one at the Stanford University Hospital has shown that photographic evidence is absolutely critical. It is used to aid eyewitnesses and victims in making crucial identifications, because few arrests are normally made at the scene. It also provides independent tangible evidence of the actual crimes.

10. Given the situation which confronted law enforcement representatives on April 12, 1971, it would seem clear that issuance of a subpoena duces tecum would have constituted an impractical and illegal course to pursue. The past experience of the Palo Alto Police and Santa Clara County District Attorney's Office with the Stanford Daily, as reflected in the Municipal Court hearing of 1969, indicated that representatives of the paper could not completely comply with such a process. The admitted policy of the Stanford Daily subsequent to that hearing (which policy was known to local law enforcement) further indicated that its representatives would take affirmative action to thwart such a proceeding by deliberately destroying pictures which might tend to incriminate anyone. Further, a subpoena duces tecum could not have legally issued at that time since under Cali-

ifornia Penal Code Section 1326-1327 a subpoena can issue only when there is a criminal action set to be tried. In the existing situation on April 12, 1971, no complaints had even been filed, nor any trial date scheduled. To delay efforts to obtain photographic evidence until after criminal complaints had been filed would have only given representatives of the Stanford Daily additional time in which to carry out their cynical efforts to thwart the judicial process. A good faith reading of California Penal Code Section 1524(4) would have led to the conclusion that it represented a proper legal procedure by which evidence of the commission of a felony could be sought, in the words of the statute, "... from any place, or from any person in whose possession it may be."

11. The above stated matters are of my personal knowledge. If I were called as a witness in this action, I could competently testify to all of the above stated facts.

/s/ Craig Brown
Craig Brown

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted in Printing]

**AFFIDAVIT OF RICHARD HENRY PEARDON
REGARDING THE MOTION FOR
SUMMARY JUDGMENT**

**I, RICHARD HENRY PEARDON, being sworn,
state:**

1. I am one of the defendants in the above-entitled action.

2. I am employed as a police officer by the City of Palo Alto, California, and have been so employed for approximately four (4) years.

3. I was so employed and on duty as a police officer on April 12, 1971, between the hours of 5:00 p.m. and 7 p.m.

4. At approximately 5:50 p.m. on April 12, 1971, I and three other Palo Alto police officers, namely Officer Deisinger, Officer Martin, and Officer Bonander, went to the offices of the Stanford Daily, located in the Storke Student Publications Building, Stanford, California, to execute a search warrant issued that day.

5. Said search warrant directed us "to make immediate search of the premises of *Stanford Daily*, consisting of offices and rooms within the Stokes [sic] publications building, located at Stanford University, County of Santa Clara, State of California, for the personal property described as follows: 1)

Negatives of films taken at Stanford University Hospital on the evening of April 9, 1971, showing the Sit-In at the Hospital and following events. 2) The film used while taking pictures at Stanford University Hospital on April 9, 1971, showing the Sit-In and following events. 3) Any pictures which display the events and occurrences at Stanford University Hospital on the evening of April 9, 1971."

6. We were accompanied by one member of the Stanford University Police Department, who was to act as a liaison between us and Stanford University if needed. This officer did not participate in any manner in the execution of said search warrant or in the search of the offices of the Stanford Daily to the best of my knowledge. This officer had no authorization from me to participate in any manner in the search of the offices of the Stanford Daily pursuant to said search warrant.

7. I have no knowledge that any other member of the Stanford University Police Department was present during the course of our search of the offices of the Stanford Daily.

8. During the course of the search of the offices of the Stanford Daily, I viewed essentially four separate rooms comprising the offices of the Stanford Daily. The room identified as the photography laboratory was in a fairly orderly condition, but I found photographs among other materials in the trash container. In the remaining three rooms, many different types of materials were scattered on desk tops, table tops, and cabinet tops and in desk drawers, cartons,

and filing cabinet drawers in an extremely disorganized and disorderly fashion. Photographs were interspersed among printed and written materials in an apparently random manner.

9. During the course of the search of the offices of the Stanford Daily, I looked through only unlocked drawers as well as on desk tops, table tops, and similarly open areas for the items described in said search warrant. There were several locked desk drawers and filing cabinet drawers, but these locked areas remained locked throughout the entire course of the search to the best of my knowledge.

10. I looked carefully only at pictures, negatives, and film I discovered in order to determine whether they came within the scope of said search warrant.

11. I glanced only very briefly at all other materials in order to determine whether they were pictures, negatives, or film or whether pictures, negatives, or film were concealed among them. At no time did I read all or any part of, or in any way (except as above-stated) scrutinize any materials which were not pictures, negatives, or film. My perusal of such materials was so brief that I could not have described what materials I looked at or any portion of the contents thereof.

12. During the entire course of my search of the offices of the Stanford Daily, I was carefully and closely watched by at least one and sometimes more persons who apparently were staff members of the Stanford Daily, I was photographed numerous times,

and I was subjected to harassing comments by said persons. At no point during the course of my search of the offices of the Stanford Daily did anyone present say or infer that the materials being looked through were confidential materials.

13. I attempted to replace any materials looked through in the same condition as I found them.

14. To the best of my knowledge, the time actually spent searching the offices of the Stanford Daily was approximately fifteen minutes.

15. To the best of my knowledge, Officer Martin did not participate in the search of the offices of the Stanford Daily in any manner. The search was carried out by only three officers of the Palo Alto Police Department.

16. If I were called as a witness in the above-entitled action, I could competently testify to all of the above-stated facts.

/s/ Richard Henry Peardon
Richard Henry Peardon

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted in Printing]

AFFIDAVIT OF DONALD EZRA MARTIN
REGARDING THE MOTION FOR
SUMMARY JUDGMENT

I, DONALD EZRA MARTIN, being sworn, state:

1. I am one of the defendants in the above-entitled action.

2. I am employed as a police officer by the City of Palo Alto, California, and have been so employed for approximately six (6) years.

3. I was so employed and on duty as a police officer on April 12, 1971, between the hours of 5:00 p.m. and 7 p.m.

4. At approximately 5:50 p.m. on April 12, 1971, I and three other Palo Alto police officers, namely Officer Deisinger, Officer Peardon, and Officer Bonander, went to the offices of the Stanford Daily, located in the Storke Student Publications Building, Stanford, California, to execute a search warrant issued that day.

5. Said search warrant directed us "to make immediate search of the premises of Stanford Daily, consisting of offices and rooms within the Stokes [sic] Publications Building, located at Stanford University, County of Santa Clara, State of California, for the personal property described as follows: 1) Negatives of films taken at Stanford University Hospital on the evening of April 9, 1971, showing the Sit-In at

the Hospital and following events. 2) The film used while taking pictures at Stanford University Hospital on April 9, 1971, showing the Sit-In and following events. 3) Any pictures which display the events and occurrences at Stanford University Hospital on the evening of April 9, 1971."

6. We were accompanied by one member of the Stanford University Police Department, who was to act as a liaison between us and Stanford University if needed. This officer did not participate in any manner in the execution of said search warrant or in the search of the offices of the Stanford Daily to the best of my knowledge. This officer had no authorization from me to participate in any manner in the search of the offices of the Stanford Daily pursuant to said search warrant.

7. During the course of our search of the offices of the Stanford Daily, another member of the Stanford University Police Department arrived at the scene. To the best of my knowledge, he merely looked around and immediately left the scene. To the best of my knowledge, he did not participate in any manner in the execution of said search warrant or in the search of the offices of the Stanford Daily. He had no authorization from me to participate in any manner in the search of the offices of the Stanford Daily pursuant to said search warrant.

8. I did not participate in any manner in the actual search of the offices of the Stanford Daily. Rather, I mainly stood in the hallway between the various offices of the Stanford Daily and watched the

progress of the search and the various people who were present in said offices and hallway.

9. In viewing the essentially four rooms which comprised the offices of the Stanford Daily, I noticed that many different types of materials were scattered on desk tops, table tops, and cabinet tops in an extremely disorganized, disorderly, and apparently illogical fashion.

10. To the best of my knowledge, the three officers who conducted the actual search of the offices of the Stanford Daily looked through only unlocked drawers as well as on desk tops, table tops, and similarly open areas.

11. To the best of my knowledge, said three officers looked carefully only at pictures, negatives, and film.

12. To the best of my knowledge, said three officers glanced only very briefly at all other materials which were not pictures, negatives, or film.

13. During the entire course of the search of the offices of the Stanford Daily, said three officers were closely and carefully watched by anywhere from one to six or more persons who apparently were staff members of the Stanford Daily, they were photographed numerous times, and they were subjected to harassing comments by said persons. To the best of my knowledge, at no point during the course of the search of the offices of the Stanford Daily did anyone present say or infer that the materials being looked through were confidential materials.

14. To the best of my knowledge, the time actually spent searching the offices of the *Stanford Daily* was approximately 15 minutes.

15. If I were called as a witness in the above-entitled action, I could competently testify to all of the above-stated facts.

/s/ Donald Ezra Martin
Donald Ezra Martin

(Jurat omitted in printing)

—
In the United States District Court
for the Northern District of California

[Title omitted in printing]

**AFFIDAVIT OF JIMMIE DAVE BONANDER
REGARDING THE MOTION FOR
SUMMARY JUDGMENT**

I, JIMMIE DAVE BONANDER, being sworn, state:

1. I am one of the defendants in the above-entitled action.

2. I am employed as a police officer by the City of Palo Alto, California, and have been so employed for approximately eight (8) years.

3. I was so employed and on duty as a police officer on April 12, 1971, between the hours of 5:00 p.m. and 7:00 p.m.

4. At approximately 5:50 p.m. on April 12, 1971, I and three other Palo Alto police officers, namely Officer Martin, Officer Peardon, and Officer Deisinger,

went to the offices of the *Stanford Daily*, located in the Storke Student Publications Building, Stanford, California, to execute a search warrant issued that day.

5. Said search warrant directed us "to make immediate search of the premises of *Stanford Daily*, consisting of offices and rooms within the Stokes [sic] Publications Building, located at Stanford University, County of Santa Clara, State of California, for the personal property described as follows: 1) Negatives of films taken at Stanford University Hospital on the evening of April 9, 1971, showing the Sit-In at the Hospital and following events. 2) The film used while taking pictures at Stanford University Hospital on April 9, 1971, showing the Sit-In and following events. 3) Any pictures which display the events and occurrences at Stanford University Hospital on the evening of April 9, 1971."

6. We were accompanied by one member of the Stanford University Police Department, who was to act as a liaison between us and Stanford University if needed. This officer did not participate in any manner in the execution of said search warrant or in the search of the offices of the *Stanford Daily* to the best of my knowledge. This officer had no authorization from me to participate in any manner in the search of the offices of the *Stanford Daily* pursuant to said search warrant.

7. I have no personal knowledge at this time that any other member of the Stanford University Police Department was present during the course of our search of the offices of the *Stanford Daily*.

8. During the course of the search of the offices of the *Stanford Daily*, I viewed essentially four separate rooms. With the exception of the room identified as the photography laboratory, I saw many different types of materials scattered on desk tops, table tops, and cabinet tops in an extremely disorganized and disorderly fashion in the remaining rooms. Materials in desk drawers and filing cabinet drawers were also disorganized and disorderly. Photographs were interspersed among printed and written materials in an apparently random manner. Photographs were discovered among other papers in trash containers.

9. During the course of the search of the offices of the *Stanford Daily*, I looked through only unlocked drawers as well as on desk tops, table tops, and similarly open areas for the items described in said search warrant. There were several locked desk drawers and filing cabinet drawers, but these locked areas remained locked throughout the entire course of the search to the best of my knowledge.

10. I looked carefully only at pictures, negatives, and film I discovered in order to determine whether they came within the scope of said search warrant.

11. I glanced only very briefly at all other materials in order to determine whether they were pictures, negatives, or film or whether pictures, negatives, or film were concealed among them. At no time did I read all or any part of, or in any way (except as above-stated) scrutinize any materials which were not pictures, negatives, or film. My perusal of such ma-

terials was so brief that I could not have described what materials I looked at or any portion of the contents thereof.

12. During the entire course of my search of the offices of the *Stanford Daily*, I was carefully and closely watched by at least one or more persons who apparently were staff members of the *Stanford Daily*, I was photographed numerous times, and I was subjected to harassing comments by said persons. At no point during the course of my search of the offices of the *Stanford Daily* did anyone present say or infer that the materials being looked through were confidential materials.

13. I attempted to replace any materials looked through in the same condition as I found them.

14. To the best of my knowledge, the time actually spent searching the offices of the *Stanford Daily* was approximately 15 minutes.

15. To the best of my knowledge, Officer Martin did not participate in the search of the offices of the *Stanford Daily* in any manner. The search was carried out by only three officers of the Palo Alto Police Department.

16. If I were called as a witness in the above-entitled action, I could competently testify to all of the above-stated facts.

/s/ Jimmie Dave Bonander
Jimmie Dave Bonander

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

AFFIDAVIT OF PAUL JOSEPH DEISINGER
REGARDING THE MOTION FOR
SUMMARY JUDGMENT

I, PAUL JOSEPH DEISINGER, being sworn,
state:

1. I am one of the defendants in the above-entitled action.

2. I am employed as a police officer by the City of Palo Alto, California, and have been so employed for approximately ten (10) years.

3. I was so employed and on duty as a police officer on April 12, 1971, between the hours of 5:00 p.m. and 7:00 p.m.

4. At approximately 5:50 p.m. on April 12, 1971, I and three other Palo Alto police officers, namely Officer Martin, Officer Bonander, and Officer Peardon, went to the offices of the *Stanford Daily*, located in the Storke Student Publications Building, Stanford, California, to execute a search warrant issued that day.

5. Said search warrant directed us "to make immediate search of the premises of *Stanford Daily*, consisting of offices and rooms within the Stokes [sic] Publications Building, located at Stanford University, County of Santa Clara, State of California, for the personal property described as follows: 1) Negatives

of films taken at Stanford University Hospital on the evening of April 9, 1971, showing the Sit-In at the Hospital and following events. 2) The film used while taking pictures at Stanford University Hospital on April 9, 1971, showing the Sit-In and following events. 3) Any pictures which display the events and occurrences at Stanford University Hospital on the evening of April 9, 1971."

6. We were accompanied by one member of the Stanford University Police Department, who was to act as a liaison between us and Stanford University if needed. This officer did not participate in any manner in the execution of said search warrant or in the search of the offices of the *Stanford Daily* to the best of my knowledge. This officer had no authorization from me to participate in any manner in the search of the offices of the *Stanford Daily* pursuant to said search warrant.

7. I have no personal knowledge at this time that any other member of the Stanford University Police Department was present during the course of our search of the offices of the *Stanford Daily*.

8. During the course of the search of the offices of the *Stanford Daily*, I viewed three separate rooms. With the exception of the room identified as the photography laboratory, I saw many different types of materials scattered on desk tops, table tops, and cabinet tops in an extremely disorganized and disorderly fashion. My search of the offices of the *Stanford Daily* was limited to the photography laboratory and

its adjoining office. I recall searching a filing cabinet full of negatives, some apparently belonging to other student publications, and the tops of table-like furniture. I do not recall searching in any desk drawers, nor did I search in any area that was locked. I also looked through trash containers in these two rooms. I believe that photographs were interspersed among printed and written materials that I looked through.

9. I looked carefully only at pictures, negatives, and film I discovered in order to determine whether they came within the scope of said search warrant.

10. I glanced only very briefly at all other materials in order to determine whether they were pictures, negatives, or film or whether pictures, negatives, or film were concealed among them. At no time did I read all or any part of, or in any way (except as above-stated) scrutinize any materials which were not pictures, negatives, or film. My perusal of such materials was so brief that I could not have described what materials I looked at or any portion of the contents thereof.

11. During the entire course of my search of the offices of the *Stanford Daily*, I was carefully and closely watched by at least one and up to six persons who apparently were staff members of the *Stanford Daily*, I was photographed numerous times, and I was subjected to harassing comments by said persons. At no one point during the course of my search of the offices of the *Stanford Daily* did anyone present say

or infer that the materials being looked through were confidential materials.

12. I attempted to replace any materials looked through in the same condition as I found them.

13. To the best of my knowledge, the time actually spent searching the offices of the *Stanford Daily* was approximately 15 minutes.

14. To the best of my knowledge, Officer Martin did not participate in the search of the offices of the *Stanford Daily* in any manner. The search was carried out by only three officers of the Palo Alto Police Department.

15. If I were called as a witness in the above-entitled action, I could competently testify to all of the above-stated facts.

/s/ Paul Joseph Deisinger
Paul Joseph Deisinger

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

AFFIDAVIT OF ALLAN ARTHUR BOWRA
REGARDING MOTION FOR SUMMARY
JUDGMENT

I, ALLAN ARTHUR BOWRA, being sworn,
state:

1. I am employed as a police officer by the City of Palo Alto, California, hold the rank of lieutenant, and was so employed and on duty on April 9, 1971.

2. On that date, I was in charge of two arrest teams consisting of a total of eleven officers. Upon our arrival at the Stanford Hospital I took my arrest teams up the stairs to the westerly side of the administration offices. The double doors into the administration offices hallway were barricaded by the demonstrators and locked with a chain by them. The glass in and round the doors was covered with papers, plastic, and furniture, making it virtually impossible for me to view the demonstrators inside the barricaded area.

3. Chief Zurcher spoke to the demonstrators through the closed double doors. At approximately 6:00 p.m. Assistant Chief Anderson advised the demonstrators twice with the bullhorn that their actions constituted violations of the law and they were given five minutes to leave the area or face arrest. His statements followed those of Mr. Frank Vitale, hospital administrator, who advised the group to leave.

4. A wooden battering ram was furnished by the hospital, and our officers attempted to force the double doors open with it to no avail. Glass partitions in the door and along the side of the door were broken out, and the demonstrators used a fire hose to pour water out through the broken areas. Missiles were then thrown apparently by the demonstrators and Officer Garner was hit by a missile and he fell to the floor. He was then removed to a safer area.

5. Onlookers were behind us in the west corridor, and some apparently were not supportive of our efforts. They apparently posed a threat to our safety and Assistant Chief of Police Anderson twice read a warning to them to clear the corridor. Arrest Team No. 1 was assigned to move those onlookers westerly passed [sic] the glass doors to our rear. This was accomplished but the officers had to remain to present [sic] them from reentering the corridor.

6. Several squads of Santa Clara County sheriff's deputies arrived. Ropes were then tied to the barricaded doors. By pulling on one door, sufficient access was gained to permit both [sic] cutters to be inserted, and the chain was cut. The second door was then removed and Squad A and the two arrest teams entered the occupied area amid debris being thrown by the demonstrators. The demonstrators exited through the east doors where Sergeant Monasmith and his squad were stationed. By the time I arrived at the east doors, the conflict which had ensued there had ceased.

7. The above facts are stated on my personal knowledge. If I were called as a witness in this action I could competently testify to the above stated facts.

/s/ Allan Arthur Bowra
Allan Arthur Bowra

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

**AFFIDAVIT OF ROBERT MONASMITH
REGARDING MOTION FOR SUMMARY
JUDGMENT**

I, ROBERT MONASMITH, being sworn, state:

1. I am employed as a police officer by the City of Palo Alto, hold the rank of sergeant, and was so employed and on duty on April 9, 1971.

2. On that date, I was assigned to the B Squad consisting of nine police officers. The B Squad was detailed to the Stanford University Hospital to secure and hold the east double doors to the administration offices on the second floor. On our arrival at this area, I deployed my eight men into two ranks of four—one rank facing the double doors and the other rank facing the group in the hall to protect the rear.

3. At the east double doors, many items of office furniture, such as filing cabinets, chairs, tables, had been pushed against the inside of the doors as a

barricade. There appeared to be about 10 to 15 persons manning this barricade, and they were physically pushing against the barricade to hold it tight against the doors. I also noted that newspapers and paper banners were affixed against the inside glass of the doors and adjacent glass doors so as to block the view of the inside. However, one portion of the papers had come loose and a small view of the area inside the doors could be had.

4. A tape recorder microphone was held constantly against the center crack in the double doors, and the recorder was kept on until a later point in time when the recorder was thrown or knocked to the floor and the microphone was broken.

5. I could hear noises from the west door, which indicated that an effort was being made by the police officers to gain access to the office area with a battering ram. Each time the battering ram hit the doors, the group inside would yell "hold that line". I also heard the group inside yelling to the group standing to our rear in the corridor to do something to help them. The group inside also called to the individuals in the corridor, urging them to go out around the campus and the hospital and do what they could. A short time thereafter, the group in the corridor diminished somewhat to approximately 10 to 15 persons. A short while later, the group in the corridor had regained its original size.

6. During most of the time that I was stationed at the east doors, there was not much activity in my immediate area. Slogans and obscenities were shouted

at various times by the demonstrators in the barricaded area.

7. Suddenly, I was aware that the people inside of the east doors were very rapidly removing the barricade on the inside of the door. From all indications it appeared that they were going to come out. Prior to this, one of the officers in the line commented that, "they've armed themselves with clubs and sticks". I immediately attempted to advise the commanding officer or any one on the radio of this development. I had some difficulty in getting through, and by the time that I did get through, the barricade had been removed, the doors had been flung open, and the whole group of people attacked our line. To the best of my knowledge, I instructed my men to hold the demonstrators where they were.

8. I drew my baton and went into the line to assist. I believe I began to push the crowd with my baton in a horizontal position, and then I was struck on the right upper arm and fell to the floor. As I tried to rise, I was hit three times on the helmet, which knocked the face shield and cover off. Each time I tried to rise from the floor, I was hit on the head. When I did regain my footing, I was struck repeatedly on the left shoulder area. By that time it was obvious to me that we would have to fight to fend off the attacking demonstrators.

9. Some of the demonstrators got through the line and ran down the corridor. As I was attempting to stop one of the demonstrators, I was struck from the rear.

10. At that time I was not able to identify any of the demonstrators who had assaulted me.

11. Upon my return to the previously barricaded area, I observed Agent Eberlein standing off to one side holding his left hand. It was obvious that he was badly injured. I then saw that Officer Savage was also badly hurt.

12. It should be made very clear that prior to the violence that ultimately ensued, the officers assigned to B Squad made a very definite and concerted effort to hold their assigned position with the proper usage of the baton. The batons were initially held by them at a "high port" position, and they were pushing against the group coming out of the doors. This line and position was held for a period of approximately four to five seconds before the demonstrators brought their clubs and sticks into positive use. Then it became a situation wherein each officer had to fend off blows and protect himself.

The above facts are stated on my personal knowledge. If I were called as a witness in the above-entitled action, I could competently testify to all of the above-stated facts.

/s/ Robert Monasmith
Robert Monasmith

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

AFFIDAVIT OF CLARENCE ANDERSON
REGARDING MOTION FOR SUMMARY
JUDGMENT

I, CLARENCE ANDERSON, being sworn, state:

1. I am the Assistant Chief of Police of the City of Palo Alto and have been employed as a police officer for the City of Palo Alto for thirty years.

2. I was so employed and on duty April 9, 1971. On that date at approximately 10:30 a.m., I met with Chief of Police James C. Zurcher, Dr. John L. Wilson, Director of Stanford University Medical Center, and Frank R. Vitale, Deputy Director of Stanford University Hospital. Also present were Mr. James Siena, Stanford University attorney, and other hospital personnel. Dr. Wilson stated that numerous persons had occupied the hallway and administrative offices of the second floor of the Stanford University Medical Center since approximately 1:00 pm. on April 8, 1971. Dr. Wilson stated that the presence of such persons was disruptive to the operation of the hospital and interfered with patient care. He stated that the numbers fluctuated between 35 and 125 persons depending upon the time of day or night. He further stated that he wanted the group removed and the area cleared.

3. Mr. Vitale stated that he was authorized by the owners of the hospital to make any official an-

nouncements to clear the area. This statement was verified by Mr. William Miller, acting president of Stanford University.

4. It was agreed at that meeting the Palo Alto Police Department would take action to clear the area at approximately 6:00 p.m. on April 9, 1971, in the event the group was still occupying the administrative offices and the hallway.

5. At approximately 5:45 p.m. on April 9, 1971, police personnel arrived at the second floor of the Stanford University Medical Center adjacent to the administrative offices. At that time, the large double glass doors at each end of the hall adjacent to the administrative offices were chained in a closed position and barricades of desks, tables, chairs, and other miscellaneous materials were stacked against the inside of the doors by the demonstrators to prevent entry.

6. At approximately 5:50 p.m., the Chief of Police James C. Zurcher approached the barricaded doors at the west end of the corridor and requested to speak with Willie Newberry. A voice from inside the barricaded area indicated "there is nobody named Willie in here". Chief Zurcher stated then that the police were going to bring the demonstrators out but wanted to do so as peacefully as possible. A person from inside the barricaded area replied, "There is a lot of expensive stuff in here and we're going to get it. People out there are going to get hurt." Zurcher replied, "Then I understand you don't want to come out."

7. Just prior to 5:55 p.m., the following announcement was read by Mr. Frank Vitale, "I am Frank Vitale and I represent the owner of these premises. You are not welcome here and are causing a disturbance. I request that you leave immediately and if you do not I shall ask for your arrest."

8. Immediately thereafter, I read the following statement, "I am Assistant Chief Anderson and I represent the Police Department. You have been requested to leave by the owner of this property, and your failure to do so constitutes a trespass. I demand you in the name of the people of the State of California to disburse [sic], and if you do not, you shall be arrested for violation of Penal Code Section 407, Unlawful Assembly, Penal Code Section 409, Refusal to Disperse, and Section 602 of the Penal Code, Trespass. You have five minutes to leave the hospital area." This statement was immediately repeated a second time. The statements read by Mr. Vitale and myself were made over a power voice megaphone placed against a crack in the doors as the statements were read.

9. At the end of two minutes the group within the barricaded area was advised they had three minutes to leave. They were again advised they had two minutes to leave; then one minute; and finally that five minutes had passed. Replies from inside the barricaded area indicated that the people therein had heard and understood the announcements. At the end of the five minute period when there was no response or effort on the part of the group to leave

the area, instructions were given to the police officers to force entry into the barricaded area.

10. According to the records in my possession, fourteen (14) Palo Alto police officers were injured seriously enough in subsequent assaults by the demonstrators to warrant medical attention. The total cost for said injuries was estimated to be in excess of Fourteen Thousand Dollars (\$14,000.00) as of June 4, 1971. The records indicate that only two of the demonstrators who had inflicted said injuries could be identified.

11. I am informed that many other police officers were also assaulted and battered by the demonstrators but did not require more than immediate medical attention.

12. The above facts are stated on my personal knowledge. If I were called as a witness in the above-entitled matter, I could competently testify to the above-stated fact.

/s/ Clarence Anderson
Clarence Anderson

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

**AFFIDAVIT OF J. E. GARNER REGARDING
MOTION FOR SUMMARY JUDGMENT**

I, J. E. GARNER, being sworn, state:

1. I am employed as a police officer by the City of Palo Alto, California, and was so employed and on duty on April 9, 1971.

2. On that date, I was assigned to Squad A in an effort to handle a group disturbance at Stanford Hospital. The initial assignment was located outside the administration building known as Boswell Building. Our squad was met by a very hostile group of people, many of them apparently hospital personnel.

3. Within the hospital, there was a barricaded area. The doorway was blocked by desks and filing cabinets and various papers were taped on the window glass. Several attempts were made by my squad to force entry into the "held" area after the announcements by Assistant Chief Anderson by the group to disburse [sic]. A battering ram was used with little success. However, once we broke out the glass in the doors, numerous objects were thrown at us. I was struck by a thrown metal object. The impact was sufficient for me to lose consciousness. I was not able to identify the person who threw the object at me from the barricaded area.

4. I state the above facts on my personal knowledge. If I were called as a witness in this matter, I could competently testify to the above stated facts.

/s/ J. E. Garner
J. E. Garner

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

**AFFIDAVIT OF
FRANK RICHARD BENADERET REGARDING
MOTION FOR SUMMARY JUDGMENT**

I, FRANK RICHARD BENADERET, being sworn, state:

1. I am employed as a police officer by the City of Palo Alto, California, and was so employed and on duty on April 9, 1971.

2. On that date I was assigned to Arrest Team 2 at Stanford University Hospital. My position was at the west end of the second floor of Boswell Building. My function was to move into the occupied area and to peacefully arrest the demonstrators who remained at the scene of the unlawful assembly. At that time, the doors leading into the west side of the administration wing were closed and barricaded with a great

amount of office furniture stacked behind the door. The doors were chained closed from the inside.

3. After Assistant Chief Anderson gave the warnings regarding the unlawful assembly and five minutes for the demonstrators to disburse [sic], no one had emerged through the west doors. Thereafter, a group of our officers used a battering ram to break down the doors to the sit-in area. They were unsuccessful at first. The officers then broke out the glass adjacent to the locked double doors. Immediately, heavy missiles were thrown by the demonstrators through the glass at the officers. Simultaneously a fire hose from within the occupied area was turned on and turned on the officers at the opening of the glass break. The force of the water caused the shattered glass to break further, and much of it flew into the area where the police officers were assembled. Officer Garner was hit in the chest by one of the first missiles thrown through the opening in the glass. He had been hit with a heavy metal scotch tape dispenser. Just after Officer Garner was knocked to the floor, an approximately one foot length of two-inch cast iron sewer pipe was thrown within the occupied area. My opinion, is that if an individual had been hit with that pipe, which was thrown with tremendous force, he would have suffered great bodily harm or death.

4. While the above stated activities were going on, a group of 30 to 40 people who apparently were sympathetic to the demonstrators were standing approximately four feet away from the rear of our lines. They began shouting support for the demon-

strators and profanities at the officers. They were asked to leave, and they refused. Anderson then declared to that group that they also constituted an unlawful assembly. They were walked back to an area approximately 100 feet further to the rear on the other side of another set of double doors.

5. When the doors leading to the sit-in area were fully opened, the police officers climbed over the barricades and into the occupied area. I followed with our arrest team and found the demonstrators fleeing through the east side of the area. The occupied area was found to be in complete shambles; broken furniture, glass, and extensive debris were on the floor. All of the offices and the hallway areas within the occupied area were completely demolished as evidenced by partitions between offices having been torn down, telephones having been ripped from the walls, filing cabinets having been dumped and thrown to the ground, and the floors being littered with papers, files, books, and broken furniture.

6. It was reported to me that, while officers of the arrest team were walking arrested persons to the transportation buses, the officers were bombarded with large rocks and other missiles. It was reported that at least one door window of the bus had been broken completely by the thrown rocks. Inside of the occupied area a poster indicating "kill a pig" was found taped to the wall in the hallway and a red flag was tacked above the double doors.

The above facts are stated on my own personal knowledge. If I were called as a witness in this ac-

tion, I could competently testify to all of the above-stated facts.

/s/ Frank Richard Benaderet
Frank Richard Benaderet

(Jurat omitted in printing)

In the United States District Court for the
Northern District of California

[Title Omitted in Printing]

**AFFIDAVIT OF MELVILLE A. TOFF IN
OPPOSITION TO THE MOTION FOR
SUMMARY JUDGMENT**

I, MELVILLE A. TOFF, being first duly sworn,
state:

That I am one of the attorneys for defendants in the above-entitled action. That I have reviewed the affidavits in support of the motion for summary judgment filed by Edward Kohn, Charles Lyle, Fred Mann, Don Tollefson and Steven Ungar, and, there are alleged factual statements made in each of said affidavits, which I am not in a position to controvert without the opportunity to depose these individuals, and complete necessary discovery in connection with matters set forth in said affidavits.

It is important for the defendants, through discovery procedures, to elicit, among other things, the relationship of Stanford University to the Stanford Daily, the relationship of each of the plaintiffs to the

Stanford Daily and to the University, whether or not plaintiffs or any of them have the legal capacity or right to maintain this suit, whether or not, the Stanford Daily is in fact a newspaper of general circulation, the editorial contents and policies of the Stanford Daily, the person or persons who control the policy or policies of the paper, the source of revenue of the Stanford Daily, whether or not, in fact, any academic credit is received by students working on the paper from the Stanford University for their work on the Stanford Daily, whether or not, in fact, any persons affiliated with the Stanford University or its officers control, supervise or have any say whatsoever in the editorial policy of the Stanford Daily, or its management, the extent of coverage of news activities of the Stanford Daily and the extent to which it disseminates its information, the photographers that were present from the Stanford Daily on April 8, 1971 and April 9, 1971 at the sit-in demonstrations, involved in this suit, the number of photographs and the ownership of the photographs and/or negatives taken at said demonstration, the extent to which the Stanford Daily members consider themselves free to dispose of or destroy unpublished materials or photographs including incriminating evidence and evidence covered by a judicially authorized process or warrant, together with whether any such destruction has ever occurred, the extent to which the members of the Stanford Daily hold an allegedly [sic] position of trust among radical groups, how and in what manner the members of the Stanford Daily have been able to

cover news of actions more closely and more accurately than any of the other media in the area, as alleged, the extent and nature of the alleged disruption of activities allegedly caused by the Palo Alto Police Department, the amount of the alleged confidential information laying around the Daily offices at the time of the search, the subject matter of this lawsuit, how and in what manner the ability of the staff members to function as reporters has been diminished as alleged, how or in what manner or to what extent has the newsgathering function of the Stanford Daily been impaired by any search or threat of future searches as alleged, the alleged items of correspondence and in particular the nature of such correspondence that any of the police officers allegedly reviewed, how or in what manner the policy of the Stanford Daily helped to extricate photographers from difficult situations as alleged, how, or in what manner or to what extent or by what persons, and in what manner, the Stanford Daily members have been threatened while covering campus demonstrations together with the alleged reasons for said threats and/or harassments.

The foregoing is a partial list of the factual matters that I hope to develop with discovery procedures, and after development of the foregoing information through the normal and allowable discovery procedures, I will then, on behalf of defendants, be in a position to more adequately prepare the defense of this action and oppose the motion for summary judgment.

WHEREFORE, this affiant respectfully requests the Court to deny plaintiffs motion for summary judgment, or in the alternative, continue the motion until such time as the defendants have the opportunity to complete the discovery necessary to properly prepare a defense to this action.

/s/ Melville A. Toff
Melville A. Toff

(Jurat omitted in printing)

United States District Court
Northern District of California

—
No. C-71 912 RFP
—

The Stanford Daily, Felicity A. Barringer,
Fred Mann, Edward H. Kohn, Richard
Lee Greathouse, Robert Litterman, Hall
Daily and Steven G. Ungar,

Plaintiffs,

vs.

James Zurcher, individually and as Chief of
Police of the City of Palo Alto, County
of Santa Clara, State of California, James
Bonander, Paul Deisinger, Donald Martin,
and Richard Peardon, all individually and
as Police Officers of the City of Palo Alto,
County of Santa Clara, State of California,
Louis P. Bergna, individually and as Dis-
trict Attorney for the County of Santa
Clara, State of California, Craig Brown,
individually and as Deputy District Attor-
ney for the County of Santa Clara, State
of California,

Defendants.

[Filed Nov. 14, 1972]

JUDGMENT

This cause came on to be heard on motion of the
plaintiffs for summary judgment pursuant to Rule 56
of the Federal Rules of Civil Procedure, and the

court having read the pleadings on file and considered
the affidavits of plaintiffs in support of the motion
and the affidavits of the defendants in opposition
thereto, and the court having heard the argument of
counsel, and due deliberation having been had thereon,
and the court having prepared and filed a Memorandum
and Order on October 5, 1972,

IT IS HEREBY ORDERED, ADJUDGED AND
DECREED that there is no genuine issue as to any
material fact and that plaintiffs are entitled to judg-
ment as a matter of law against each and all of the
defendants (other than defendant J. Barton Phelps,
as to whom a stipulated Dismissal With Prejudice
has been filed by plaintiffs) in conformity with the
Memorandum and Order granting declaratory relief
previously filed by the court herein on October 5,
1972.

Dated: Nov. 14, 1972

/s/ Robert F. Peckham
United States District Judge

United States District Court
Northern District of California

No. C-71 912 RFP

<p>The Stanford Daily, et al., James Zurcher, individually and as Chief of Police of the City of Palo Alto, County of Santa Clara, State of California, et al.,</p>	<p>Plaintiffs, vs. Defendants.</p>
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[Filed Dec. 15, 1972]

DISMISSAL WITH PREJUDICE

Upon the instance of plaintiffs, and good cause appearing and no showing having been made that defendant Phelps acted other than in good faith in discharging his judicial responsibility.

It Is Hereby Ordered that the action is dismissed with prejudice as to defendant J. Barton Phelps, sued herein individually and as Judge of the Municipal Court of Palo Alto-Mountain View Judicial District, Santa Clara County, State of California.

Dated: Dec. 15, 1972

/s/ Robert F. Peckham
United States District Judge

In the United States District Court
Northern District of California

No. C-71 912 RFP

<p>The Stanford Daily, Felicity A. Barringer, Fred Mann, Edward H. Kohn, Richard Lee Greathouse, Robert Litterman, Hall Daily and Steven G. Ungar,</p>	<p>Plaintiffs, vs.</p>
--	---------------------------------

<p>James Zurcher, individually and as Chief of Police of the City of Palo Alto, County of Santa Clara, State of California, James Bonander, Paul Deisinger, Donald Martin, and Richard Peardon, all individually and as Police Officers of the City of Palo Alto, County of Santa Clara, State of California, Louis P. Bergna, individually and as Dis- trict Attorney for the County of Santa Clara, State of California, Craig Brown, individually and as Deputy District Attor- ney for the County of Santa Clara, State of California, J. Barton Phelps, individ- ually and as Judge of the Municipal Court of the Palo Alto-Mountain View Judicial District, Santa Clara County, State of California,</p>	<p>Defendants.</p>
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[Filed Dec. 15, 1972]

ORDER SETTING ASIDE AND VACATING JUDGMENT

Whereas, a Judgment in this matter was heretofore executed and filed on November 14, 1972, and entered on record on November 16, 1972, and

Whereas, said Judgment prematurely dismissed the claim against defendant J. Barton Phelps, and

Whereas, said Judgment did not reflect a determination of the issue of award of attorneys fees prayed for by plaintiffs; and

Whereas, the Defendants and Plaintiffs herein have requested and stipulated that said Judgment be vacated and set aside.

Now, Therefore, For Good Cause, it is hereby ordered that the Judgment heretofore signed and filed on November 14, 1972, and entered on record on November 16, 1972, be, and the same is, hereby set aside and vacated.

December 14, 1972.

/s/ Robert F. Peekham

Judge of the United States District Court

(Jurat omitted in printing)

In The United States District Court For The Northern District Of California

[Title omitted in printing]

[Filed Apr. 16, 1973]

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT OR FOR SUMMARY JUDGMENT

To: Plaintiffs And Their Attorneys Of Record:

Please Take Notice that on Tuesday, May 29, 1973, at 2:30 p.m., or as soon thereafter as counsel can be heard, in the Courtroom of the Honorable Robert F. Peckham, United States Court House, Courtroom No. 1, 175 W. Taylor, San Jose, California, defendants James Zurcher, James Bonander, Paul Deisinger, Donald Martin, and Richard Peardon will move the Court for an order dismissing the complaint herein under Rule 12(b)(6), Federal Rules of Civil Procedure, on the ground that the same fails to state a claim against said defendants upon which relief can be granted, or in the alternative to grant summary judgment for said defendants under Rule 56, Federal Rules of Civil Procedure, on the ground that there is no genuine issue as to any material fact and the moving defendants are entitled to a judgment as a matter of law.

This motion will be based on the records and files herein, this Notice of Motion and Motion to Dismiss Complaint or For Summary Judgment, and the

Memorandum of Points and Authorities attached hereto.

Dated, April 16, 1973.

/s/ Peter G. Stone by Marilyn Taketa
Peter G. Stone, one of the attorneys for defendants Zurcher, Bonander, Deisinger, Martin, and Peardon

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United States District Court
Northern District of California

[Title omitted in printing]

AFFIDAVIT OF JEROME B. FALK, JR.

State of California
City and County of San Francisco—ss.

JEROME B. FALK, JR., being first duly sworn, deposes and says:

1. I am a partner in the firm of Howard, Prim, Rice, Nemerovski, Canady & Pollak, and the partner in charge of the above litigation. Associated with me in this litigation from my firm are Robert H. Mnookin (who, effective November 1, 1972, has become Of Counsel to this firm and a Professor of Law at the University of California School of Law at Berkeley) and Franklin R. Garfield.

2. Co-Counsel in the above litigation is Anthony G. Amsterdam, Professor of Law at Stanford University School of Law. Although we have attempted wherever possible to spare Professor Amsterdam the day-to-day mechanical details of the litigation, he has been intimately involved with every significant aspect of the case since its inception.

3. Our firm was retained by the plaintiffs in this case with the understanding that our services would be rendered at our firm's customary hourly rates. My time is presently billed at the rate of \$65 per hour; during earlier phases of the case, it was billed at the rate of \$55 per hour. Mr. Mnookin's time, prior to

his departure, was billed at the rate of \$55 per hour. Mr. Garfield's time is billed at the rate of \$50 per hour. The expenditure of time as reflected on the books of our firm (which are based upon the daily records of each attorney), and the total amounts attributable thereto, respecting this litigation through January 31, 1973, are as follows:

<i>Attorney</i>	<i>Hours</i>	<i>Amounts</i>
Falk	149.75	\$ 8,325.00
Mnookin	291.90	\$16,054.50
Garfield	<u>68.75</u>	<u>\$ 3,437.50</u>
	510.40	\$27,817.00

4. Although Professor Amsterdam does not keep precise time records, he conservatively estimates that he has expended not less than 75 hours with respect to this matter. I am of the opinion that a reasonable hourly rate for his services would be not less than \$80 per hour. Because Professor Amsterdam does not expect to be compensated for his services in this litigation, the instant application does not reflect the value of his efforts and is thus approximately \$6,000 less than would in fact be justified.

5. The amount of time which plaintiffs' counsel were compelled to expend greatly exceeded that which we had estimated. We had, from the outset, perceived this case as presenting several straightforward, if novel, questions of constitutional law. Although at first at least one of defendants' counsel seemed to share that conception and indicated his view that a stipulation of facts would be an appropriate means of presenting those questions to the Court, our expect-

tations were wholly frustrated. The unhappy chronicle of costly delaying tactics which ensued is partially set forth in my previous Affidavit of June 14, 1972, submitted in support of our Motion for Protective Order, and that Affidavit is incorporated herein by reference. Defendants' professed willingness to enter into a stipulation as to the facts caused us to attend at least four conferences with opposing counsel in Palo Alto (and one pre-trial conference with Your Honor), only to be met by defendants' counsels' unexplained refusal to enter into a stipulation previously agreed upon coupled with efforts to depose all of the plaintiffs. These matters were, of course, exceedingly costly (in terms of requiring plaintiffs' counsel to expend substantial amounts of time to deal with them). Counsel were also compelled to expend a substantial amount of time dealing with defendants' motions to convene a three-judge court or to abstain. Although it would be possible for me to ascertain with reasonable precision those fees directly attributable to defendants' delaying tactics in these various respects, I have not attempted to do so. I believe a fair estimate is that the fees were at least \$12,000 more than they would have been had defendants in fact approached this litigation in the constructive fashion they indicated would be followed at its outset.

6. I am always reluctant to characterize the motives of any party or its counsel. It is, I believe, fair to say as an objective matter that the history of defendants' conduct of this litigation would be difficult to square with a good faith desire on their

part that the important questions of law raised thereby be presented for disposition without undue delay. That persons whose constitutional rights have been violated should have to incur legal fees of more than \$27,000 (or even more, where one member of the legal team is not donating his services as Professor Amsterdam did) simply to obtain a summary judgment on undisputed facts is a discouraging commentary on the availability of legal remedies.

/s/ Jerome B. Falk, Jr.
Jerome B. Falk, Jr.

(Jurat omitted in printing)

United States District Court
Northern District of California

[Title omitted in printing]

[Filed Mar. 30, 1973]

SUPPLEMENTAL AFFIDAVIT OF
JEROME B. FALK, JR.

State of California
City and County of San Francisco—ss.

JEROME B. FALK, JR., being first duly sworn,
deposes and says:

1. It may well be that the court neither requires nor expects any reply or supplementary evidence concerning defendants' unseemly comments concerning my law firm, the truthfulness of our time records as

reflected in my previous affidavit, and the integrity of plaintiffs' counsel (Defendants' Opposition, at pp. 24-26). For the sake of the completeness of the record—and because I frankly resent defendants' unsupported and totally unwarranted comments—I submit this supplementary affidavit.

2. Defendants profess to be "truly amazed" that my law firm would expect to charge for its services at its customary hourly rates (*Id.* at p. 24). I have some difficulty in grasping the notion that counsel should be paid *less* for services rendered in connection with a case involving important questions of public significance than, say, defending a personal injury case. (That argument would have greater credibility in defendants' mouths were Mr. Toff to advise us that he had reduced his customary charges to the client he represents in this matter.)

3. Defendants' further comments suggesting that either our firm has taken advantage of "a college newspaper and college students" or that plaintiffs have "substantial outside financial sources" require reply. As stated in my previous affidavit, the legal fees have vastly exceeded those originally contemplated—an unhappy circumstance which I attribute to the conduct of this litigation by defendants and their counsel. Although I consider it totally irrelevant to the present motion, and indeed I heretofore hesitated to mention it lest we appear immodest, the fact of the matter is that my law firm has no intention of requiring the *Daily* to pay legal fees beyond its ability to do so. We did not undertake the prosecution

of this particular matter on a *pro bono publico* basis (although, as I am sure the court knows, we undertake many matters without expectation of compensation); unhappily, because the costs of this litigation have so completely exceeded the ability of the *Daily* to pay, it appears to have taken on that character.

4. I do not propose to dignify defendants' comments concerning my hourly charges. I do wish to respond to the statement that "per-hour rates of \$50 for an inexperienced research attorney . . . are outrageously high." (*Id.* at p. 24). Without detailing the qualifications and experience of members of this firm, I note only that \$50 per hour is the *lowest* recommended hourly fee set fourth in the San Francisco Lawyers' Club Minimum Fee Schedule.

5. Defendants state that the total time expended by attorneys in my firm "seems somewhat inflated." (*Id.* at p. 25). This motion has been pending for some time; had they the slightest real doubt about my veracity, they were free to take my deposition. They pose several questions which I am happy to answer:

(a) Students from Stanford did assist in fact gathering. No charge has been made for their efforts. Law students clerking in our firm did significant amounts of research on the case; however, I frankly felt that their efforts in this instance were not entirely productive, and no charge has been made for their efforts.

(b) None of the time reported has anything whatsoever to do with any case but this one. Our firm is not involved in any other comparable

case; and none of Professor Amsterdam's time has been charged.

(c) No time devoted to luncheon has been charged; and travel time has been, as a general matter, adjusted to exclude the greater travel time to San Jose over a trip to a San Francisco court.

(d) Almost without exception, the out-of-state affidavits submitted by plaintiffs were prepared by persons other than attorneys in my firm, and thus no time has been charged to them.

(e) I cannot allocate my time between that devoted to one legal theory and another.

(f) The problems generated by Judge Phelps have largely been the burden of Professor Amsterdam, with whom Judge Phelps frequently communicated directly (always, it should be added, at his instigation).

/s/ Jerome B. Falk, Jr.
Jerome B. Falk, Jr.

(Jurat omitted in printing)

United States District Court
Northern District of California

[Title omitted in printing]

AFFIDAVIT OF
ROBERT H. MNOOKIN

ROBERT H. MNOOKIN, being duly sworn,
deposes and says:

1. I am an attorney admitted to practice before this Court. I was an associate with the firm of Howard, Prim, Rice, Nemerovski, Canady & Pollak from July 1, 1970 until October 31, 1972, when I joined the law faculty at the University of California, Berkeley (Boalt Hall) and became "Of Counsel" to the firm. Since April, 1971, I have been one of the attorneys for plaintiffs in this action. I submit this Affidavit in support of Plaintiffs' Motion for an Award of Attorneys' Fees.

2. Based on my monthly time records prepared contemporaneously, I have determined that I devoted a total of 290.7 hours to this litigation since April, 1971. I am confident this total is accurate.

3. From my monthly time summary, daily calendar and review of the files in this case, I have allocated my time among the particular matters I worked on in this case. Although my records do not permit me to make this allocation with accuracy down to the exact number of minutes I spent on each matter, I believe the following allocation is reasonably precise:

*Factual Investigation into the Circumstances
of the Search (April and May, 1971)* *Hours*

Meetings with members of the editorial staff of the Stanford Daily; interviews with witnesses; interviews with officials of Stanford University regarding relationship of Stanford Daily to the University; preparations of statements by witnesses 77.0

Preparation of Complaint (April and May 1971)
Legal research; drafting of complaint 43.0

*Intra-District Transfer of Venue
(May and June, 1971)*
Preparation of affidavit and motion for intra-district transfer of venue; hearing on motion 3.7

*Defendants' Motion to Dismiss or Stay Action
and Request for the Convening of a Three-
Judge Court (June-September, 1971)*
Preparation of Plaintiffs' response: legal research; memorandum of points and authorities; attendance at hearing on motion 62.0

*Negotiations Over Stipulation of Facts
(October, 1971—May, 1972)*
Pre-trial conference; meetings with opposing counsel; preparation and revision of proposed stipulation of facts; telephone discussions with opposing counsel; consultation with clients 49.0

Motion for Protective Order (June, 1972)
Discussions with clients with regard to Defendants' Notice of Depositions; preparation

of Motion For Protective Order and review
of supporting affidavit 8.0

Plaintiffs' Motion for Summary Judgment
(December, 1971; June-July, 1972)

Preparation of motion: legal research; memorandum of Points and authorities; interviews; preparation of affidavits in support of motion; attendance at hearing; research for and preparation of reply memorandum 44.0

Miscellaneous (October, 1972)

Discussions with clients following Court's decision to grant motion for summary judgment 4.0

TOTAL 290.7

/s/ Robert H. Mnookin
Robert H. Mnookin

(Jurat omitted in printing)

United States District Court
Northern District of California

[Title omitted in printing]

AFFIDAVIT OF FRANKLIN R. GARFIELD

FRANKLIN R. GARFIELD, being duly sworn,
deposes and says:

1. I am admitted to practice before this Court, an associate with the firm of Howard, Prinn, Rice, Nemerovski, Canady & Pollak, and one of the attor-

neys for plaintiffs in this action. I submit this affidavit in support of plaintiffs' motion for an award of attorneys' fees.

2. Since October, 1972, and based on my monthly time records, I have devoted 235.0 hours to this litigation. My time during this period has been allocated as follows:

	<i>Hours</i>
<i>Judgment</i>	
Preparation of Judgment; designation of record on appeal; discussions with opposing counsel; legal research; stipulation dismissing defendant Phelps; stipulation vacating judgment	7.5

Plaintiffs' Motion for Attorneys' Fees

Preparation of motion for attorneys' fees: legal research; memo of points and authorities	61.8
Preparation of reply; legal research; memo of points and authorities	29.3

Defendants' Motion to Dismiss or For Summary Judgment

Preparation of response: legal research; memo of points and authorities	38.4
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Plaintiffs' Motion for Preliminary Injunction

Preparation of motion: investigation of search of Stanford University psychiatry clinic; interviews; preparation of affidavits; order shortening time; memo of points and authorities	46.7
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*Plaintiffs' Motion for Award of
Attorneys' Fees*

Preparation of motion: legal research; memo of points and authorities; affi- davits	21.9
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Miscellaneous

Administrative: discussions with clients; opposing counsel; consultation with other attorneys; review of recent legal developments	29.4
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TOTAL	235.0
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3. While the total of my time for this case is exact, it has been necessary for me to reconstruct from my daily calendar the time I devoted to the particular matters listed above. I have done this as carefully as possible, but I cannot determine with mathematical certainty the precise number of minutes I spent on each of these matters.

/s/ Franklin R. Garfield
Franklin R. Garfield

(Jurat omitted in printing)

[Filed Sep. 28, 1973]

FRIDAY, September 28th, 1973

PRESENT:

HONORABLE ROBERT F. PECKHAM,
U. S. District Judge

Ramon E. Xavier, Clerk

Roberta Rogers, Court Reporter

UNREPORTED—MINUTE ORDER

C-71-912 RFP—THE STANFORD DAILY, et al

vs.

JAMES ZURCHER, et al

It Is Hereby Ordered And Adjudged that because the District Attorney assures the Court that the *Daily* will not be the object of a Third Party Search, the Motions for Preliminary Injunction, is DENIED.

This ruling is without prejudice to any claim arising out of the search of the Stanford Medical Center later being arrested in another action. Further, that the later search is not the subject of the instant action.

It Is Further Ordered And Adjudged that the Motion of defendant Palo Alto Police parties, is DENIED.

Copies Mailed To:

Anthony G. Amsterdam, Esq.,
Attorney at Law
Stanford University Law School
Stanford, Calif. 94305

Jerome B. Falk, Jr., Esq.,
Franklin R. Garfield, Esq.,
Attorneys at Law
650 California St., Suite 2920
San Francisco, Calif. 94108

Leland D. Stephenson, Esq.,
Deputy County Counsel
70 West Hedding St.,
San Jose, Calif. 95110

Peter G. Stone, Esq.,
City Attorney
Civic Center
250 Hamilton Ave.,
Palo Alto, Calif. 94301

Melville A. Toff, Esq.,
Attorney at Law
605 Castro St.,
Mountain View, Calif. 94040